SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 578.

THE UNITED STATES, APPELLANT,

vs.

THE SPANISH SMACK "PAQUETE HABANA," JUSTA GALBAN, ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the district court of the United States, southern district of Florida.

UNITED STATES OF AMERICA
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the Spanish sloop "Paquete" and cargo, her tackle, apparel and furniture, and cargo, in a cause of prize, alleges—

That pursuant to instructions from the President of the United States Robert Berry, a commander of the United States Navy, in and with the United States ship of war the "Castine," her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as a prize of war the said "Paquete" with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said sloop "Paquete," together with her tackle, apparel, furniture, and her cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and monition issue as prayed, returnable Thursday, day of 13th May, A. D. 1898, 10.30 a. m.

Entered as of course.

E. O. LOCKE, *Clerk.*
By J. OTTO, *D'y Clerk.*

(Endorsed:) In the district court of the United States, southern district of Florida. United States vs. Spanish sloop "Paquete" and cargo. Libel. Filed Apr. 27th, 1898. E. O. Locke, clerk.

2 UNITED STATES OF AMERICA:

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Florida, greeting:

You are hereby commanded forthwith to attach, seize, and take into your custody the schooner "Paquete" and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court rooms, in Key West, the 13th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

[SEAL.] E. O. LOCKE, *Clerk.*
By J. OTTO, *Deputy.*

(Endorsed:) U. S. district court, southern district of Florida, United States vs. sloop "Paquete" and cargo. Attachment. Filed Apr. 28, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of attachment April 27th, 1898, and fully executed it on the same day by attaching and taking into my custody the Spanish sloop "Paquete."

JOHN F. HORR, *U. S. Marshal.*
By ALFRED ATCHINSON, *Deputy.*

UNITED STATES OF AMERICA:

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Fla., greeting:

Whereas, on the 27th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, esq., filed in the office of the clerk of said court their libel against the Spanish sloop "Paquete," in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. "Castine" April 25th, 1898;

Wherefore the said libellant prays that the usual process of attachment may issue against the said sloop "Paquete," that monition may issue citing all parties having or claiming any interest or property in said sloop "Paquete" to appear and answer upon oath all

3 and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for service in said cause, and that the said sloop "Paquete" may be condemned and sold to pay the said prize money, with costs, charges, and expenses,

and that the libellant may have such other and further relief in the premises as in law and justice they may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Thursday, the 12th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said sloop "Paquete" to appear at an admiralty session of said court, to be held at the court rooms of said court of Key West, in said district, on Thursday, the 12th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two other such copies in the most public places of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 12th day of May aforesaid, with your certificate of execution hereon written.

Witness the honorable James W. Locke, judge of said court, at Key West, in said district, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-first.

E. O. LOCKE, *Clerk.*
By J. OTTO, *D'y.*

(Endorsement:) U. S. district court, southern district of Fla. United States vs. Sloop "Paquete" and cargo. Monition. Filed Apr. 28, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of monition Apr. 27, 1898, and executed it on the same day by reading same to the master of the Spanish sloop "Paquete" and posting 2 copies, as within commanded.

JOHN F. HORR,
U. S. Marshal, So. Dist. of Fla.
By ALFRED ATCHINSON,
Deputy U. S. Marshal.

KEY WEST FLORIDA, *19th May, 1898.*

SIR: On April 25th last the Spanish fishing sloop "Paquete," of Havana, a blockaded port, was captured by the U. S. S. "Castine" off the port of Mariel, Cuba, at 6.10 p. m.

2. The prize, with crew, and all papers found on board in a sealed
4 package were sent in charge of a prize crew to Key West, Florida, and there delivered into the charge of the United States marshal.

Very respectfully,

R. M. BERRY,
Commander, U. S. Navy, Commanding.

(Endorsed:) Schooner "Paquete." Claim for prize shares by U. S. S. "Castine." Filed Apr. 25, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

THE UNITED STATES OF AMERICA
vs.
SLOOP "PAQUETE." } Prize.

B. F. Tilley, being duly sworn, says: My name is Benjamin F. Tilley. I am an American, in U. S. Navy, on board U. S. S. "Newport;" that on the 25th day of April, A. D. 1898, the Spanish sloop "Paquete" was captured as a prize of war by the U. S. S. "Castine," commanded by Robert Berry, commander, U. S. N.; that said sloop "Paquete" was delivered by said Robert Berry to Rear-Admiral Wm. T. Sampson (commanding North Atlantic Squadron), together with the documents and other papers found on said sloop "Paquete;" that said sloop "Paquete," with said documents and papers aforesaid, were turned over to a/lant, as prize master, with instruction to proceed to Key West, Fla.; that said papers and documents this day delivered to G. Bowne Patterson, prize commissioner, at Key West, are the identical documents and papers pertaining to the sloop "Paquete" delivered to him, and that they are in the same condition as when delivered to him.

B. F. TILLEY,
Commander, U. S. Navy.

Sworn to and subscribed before me this 25th day of April, A. D. 1898.

G. BOWNE PATTERSON,
U. S. Prize Commissioner.

(Endorsed:) U. S. vs. Schr. "Paquete." Affidavit of prize master. Filed Apr. 25, 1898. E. O. Locke, clerk.

Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined in preparatorio.

1st. interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude, or part, and when, was the said ship and goods concerning which you are now examined taken and seized? Upon what pretence and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made at the time when the said ship was taken; and if yea, how many guns were fired, and by

whom, and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war or a vessel acting without any commission, as you believe? Were any other, and what, ship' in sight at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you or any of the officers or mariners belonging to the ship or vessel concerning which you are now examined any, and what, part, share, or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have. Did you belong to the said vessel at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail during her said voyage before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port and at what time, particularly from the last clearing port, did the said ship sail previously to the capture? Set forth
6 all the ports to which she has sailed and at which she has touched and traded during her whole voyage out and home.

8th interrogate. What lading did the said vessel carry at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board at the time she was taken? When was the same put on board? Set forth the different species of lading and the quantity of each sort. Has any part of the cargo of said vessel been unladen since the commencement of her original voyage? If so, at what port or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession, and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel; and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any one of the said consignees or shippers any, and what, interest in the said goods? If yea, whereon do you found your belief that they have such interest? Do you verily believe that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters, or instruments relative to the ship and goods concerning which you are now examined? If yea, set forth where
7 they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom was such charter party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters, or other writings were on board the ship at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which you have sustained, or may sustain by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel, or ship to another? From what, and to what shore, quay, boat, barque, vessel, or ship, and when and where was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers, or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

8 24th interrogatory. Were any papers delivered out of the said ship or vessel and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture of the said ship? And when and where, by whom and by whose orders, and for what purpose and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were and are all the passports, sea briefs, charter parties, bills of sale, invoices, and papers which were found on board entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to or on behalf of the

person or persons who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And, if not, where was the ship at the time? Had any person on board any let-pass or letters of safe conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by
9 the ship's papers? Was the ship, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered at any and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid or to be paid a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know or believe in your conscience such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe that if the ship should be restored she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where they put on board; and by whom or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

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In the district court of the United States in and for the southern district of Florida. In admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" AND HER CARGO. } Prize.

Deposition of JUAN PAZOS, a witness produced, sworn, and examined in preparatorio on the 20th day of May, A. D. 1898, at the United States court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Paquete," and her cargo.

1. To the first interrogatory deponent answers:

My name is Juan Pazos. I was born in Spain. I have lived for seven years last past in Cuba. I now live in Havana, Cuba. I have lived there for 14 years. I am a Spanish subject. I am a married man. My wife and family live in Spain.

2. To the second interrogatory deponent answers:

I was present at the time of capture of the vessel. The vessel has no license or commission; she is a coasting vessel. I have a license to fish, issued by the Spanish Government. I gave it to the prize master.

3. To the third interrogatory deponent answers:

The vessel was captured April 25th, 1898, near Mariel, and we were going to Havana when captured. We were captured because of the war between Spain and the United States. We were carried into the port of Key West. The vessel sailed under the Spanish flag. We had no other colors on board. There was no resistence made at the time of the capture. The vessel which captured us was a U. S. warship. I do not know her name. There were some other ships in sight, but I do not know their names.

4. To the fourth interrogatory deponent answer:

I am the master of the vessel. I took possession of her at Havana on the 25th day of March, 1898. The owner, Justa Galvan, delivered possession to me.

5. To the fifth interrogatory deponent answers:

The vessel is of 25 tons burden; three mariners, including myself. I took them on board at Havana. I shipped them.

6. To the sixth interrogatory deponent answers:

None of the officers or crew had any interest in the vessel, but the crew and captain had an interest in cargo of fish, $\frac{2}{3}$ for the boat's crew and $\frac{1}{3}$ for the owner of the boat. I have known the boat for 5 years. I first saw her in Havana. She was built in Key West.

7. To the 7 interrogatory deponent answers:

The vessel is named the "Paquete Habana." I know she has been called by that name ever since I knew her. She had another name at one time. I think it was "Restless." This boat was a fishing smack and was engaged in running out of Havana for fishing trips.

8. To the 8th interrogatory deponent answers:

She had a cargo of fish when she was captured. We, the crew, caught the fish out of the sea. We had 40 kintals of fish on board at the time of the capture.

9. To the 9th interrogatory deponent answers:

The owner of the vessel is Justa Calvan. She lives in Havana, and is a Spaniard by birth. The present owner has been in possession for five years.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bill of sale.

11. To the 11th interrogatory deponent answers:

The cargo was put on board as we caught the fish from the *the* ocean.

12. To the 12th interrogatory deponent answers:

I have already answer'd that question in my answer to the sixth interrogatory.

13. To the 13th interrogatory deponent answers:

There was no bill of lading.

14. To the 14th interrogatory deponent answers:

There are no bills of lading or documents or invoices in the U. S. relating to the vessel and her cargo.

11 15. To the 15th interrogatory deponent answers:

There was no charter-party for this voyage.

16. To the 16th interrogatory deponent answers:

There was only a crew list on board at the time of the capture, which I delivered to the prize master.

17. To the 17th interrogatory deponent answers:

The said ship has never before been captured or condemned as prize.

18. To the 18th interrogatory deponent answers:

I have sustained a loss by the capture of this ship because I owned a part of the cargo. I have not received any indemnity or promise of indemnity for any loss which I have sustained or might sustain by reason of this capture.

19. To the 19th interrogatory deponent answers:

The ship and cargo is not insured.

20. To the 20th interrogatory deponent answers:

In case we had arrived at our port of destination and the goods had been unladen they would have belonged to the persons named.

21. To the 21st interrogatory deponent answers:

The cargo was taken from Spanish waters.

22. To the 22nd interrogatory deponent answers:

The cargo was taken from the sea.

23. To the 23rd interrogatory deponent answers:

There are no bills of lading or invoices.

24. To the 24th interrogatory deponent answers:

The crew book was delivered to the prize master.

25. To the 25th interrogatory deponent answers:

The bulk was broken at Key West by the U. S. marshal.

26. To the 26th interrogatory depo-ent answers:

There were no passengers or other persons of any discription on the vessel at the time of the capture except the crew.

27. To the 27th interrogatory deponent answers:

She had no passports or sea briefs.

28. To the 28th interrogatory deponent answers:
I cannot write much. I have not since or written any letters or papers since I was captured.
29. To the 29th interrogatory deponent answers:
We were sailing toward Havana when we were captured. She was about 11 miles.
30. To the 30th interrogatory deponent answers:
I do not know anuthing about and bill of sale. If the vessel was released she would belong to the person before stated to be the owner.
31. To the 31st interrogatory deponent answers:
There were no cannons of and discription or arms or am-unition on board.
32. To the 32nd interrogatory deponent answers:
I have already stated all that I know concerning the true prope-ty and destination of the ship and cargo.

JUAN PAZOS.

12 Sworn to and subscribed before me May 20th, 1898.
J. M. PHIPPS,
Prize Commissioner.

(Endorsed:) Standing interrogatories. Filed May 26th, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having been had and proclamation having been duly made in open court, and no persons appearing to claim any portion of said sloop "Paquete" or cargo, and a decree pro confesso having been duly entered for default of claimants, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property and were attempting to violate the blockade of Havana, now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo are condemned and forfeited to the United States as lawful prize of war.

It is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, subject to the order of this court, as required by law.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 23rd, 1898.

(Endorsed:) U. S. district court, southern district of Fla. United States vs. Sloop "Paquete" and cargo. Decree. Filed May 26, 1898. E. O. Locke, clerk.

The United States district court, southern district of Florida.

THE UNITED STATES
against
THE "PAQUETE HABANA."

A motion having been made in behalf of the owners of the above-named vessel to open the decree of condemnation and sale herein and to allow a claim to be filed, and said motion having been argued by counsel for the vessel and for the Government, it is now—

Ordered that the decree of condemnation and sale heretofore made herein be vacated and set aside, and that leave be, and hereby
13 is, granted to the owners of the vessel to file a claim in the name of the master on or before May 30th, 1898.

Key West, May 28, 1898.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. "Paqueta." Order setting former decree aside. Filed May 28, 1898. E. O. Locke, clerk.

United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "PAQUETE HABANA." } Claim.

And now comes Juan Pasos, master and lawful bailee of the fishing boat "Paquette Habana," and intervening for the interest of Justa Galbau, widow, in the said fishing boat, her tackle, apparel, and furniture, and in her fish, as the same are attached as prize at the instance of the United States, he claims the same accordingly; and the said claimant avers that before and at the time of the alleged capture of the said vessel the above-named Justa Galban, widow, was the bona fide owner of the said vessel, her tackle, apparel, and furniture, and of one-third of said fish, and that the other two-thirds of said fish belonged to this claimant and the other members of the crew, all of whom are Cubans, who prior to the recognition of Cuban independence were Spanish subjects, and that no other person is the owner of said vessel or fish, and that the claimant is the lawful bailee of both the vessel and fish. He further avers that said vessel and fish under the general law and the proclamation of the President of April 26th, 1898, were privileged and exempt from capture and condemnation as a fishing vessel, with her catch, and he denies that the vessel and fish are lawful prize of war.

Wherefore we pray leave to defend accordingly and to show cause why the vessel and fish at the time of said capture were not liable to seizure and condemnation as prize of war.

JUAN PASOS.

Sworn to and subscribed before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

CONVERS & KIRLIN,
Proct. for Claimants.

14 United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "PAQUETE HABANA." } Test affidavit.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

JUAN PASOS, being duly sworn, duly says:

1. I am master of the fishing boat "Paquete Habana" and lawful bailee of the vessel and her fish. The vessel belongs to Justa Galban, widow, of Havana, a native-born Cuban, domiciled in Cuba at the time of the recognition of the independence of the Cuban people by Congress, and is used exclusively in the coast waters of Cuba for catching small fish. Her keel length is about 43 feet and her tonnage about 25 tons. The fishing is done on shares, one-third of the catch belonging to the owner and two-thirds to the crew. The fish now on board are thus owned. They are kept and sold alive.

2. I left Havana on the last trip March 25th and proceeded to Cape San Antonio, on the coast of Cuba, in coast waters between the reefs. We finished there 25 days and then started back to Havana with the catch. We were stopped by the blockading squadron near Havana on April 25th, 1898. Prior to said time we were unaware of the existence of war or of any blockade. We were stopped by the United States ship "Castine" and brought into Key West as prize of war. No effort was made by the vessel to run the blockade after we learned of its existence.

3. I have been master of the said vessel for 4 years; then I was off her 2 years, and captain again 1 month. During that time the vessel has carried no cargo save her catches of fish, and has carried no passengers.

Her crew consists of 3 persons, including the captain. She is of sloop rig, and has one mast.

JUAN PASOS.

Sworn to before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

(Endorsed:) U. S. district court, southern dist. of Fla. U. S. vs. "Paquete Habana." Claim and test affidavit. Convers & Kirlin, proctors for cl't. Filed May 30, 1898. E. O. Locke, clerk.

In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having been

had, and proclamations having been duly made in open court,
15 and Juan Pasos having appeared and claimed said sloop "Paquete" and cargo upon the grounds of her being a fishing vessel and not liable to capture, and the case being fully heard, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property—

Now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, *Judge.*

Key West, Fla., May 30th, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Sloop "Paquete." Decree of condemnation. Filed May 30, 1898, E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeiture pronounced)—

Now, on motion of Convers & Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered, adjudged, and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 30th, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Sloop "Paquete." Decree. Filed May 30, 1898, E. O. Locke, clerk.

16 Whereupon a writ of venditioni exponas was issued to the marshal of said district, commanding him forthwith to sell at public auction the said prize "Paquete Habana," her tackle, &c., and to deposit the proceeds thereof with the assistant treasurer of the United States at New York, to the credit of said court.

Which writ was afterwards by the marshal returned, showing the proceeds of said vessel to be the sum of four hundred and ninety dollars, which sum was by the marshal deposited as commanded, viz:

Marshal's return.

Received the within writ this 26th day of May, 1898, and executed same by selling said vessel "Paquete Habana" at public auction for $490.00 and deposited the said sum with the assistant treasurer of the United States, as directed therein.

JOHN F. HORR, *U. S. Marshal.*

Sep. 28th, 1898.

(Endorsed:) United States vs. Smack "Paquete." Vend. Ex. Issued May 26, 1898. Returned & filed Sep. 28th, 1898, E. O. Locke, clerk.

17 District court of the United States, southern district of Florida, 1898.

The sloop "Paquete Habana" in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank, and office, and the service you are now on.

2. In what vessel were you, and in what capacity, at the time of the capture of the above named ship?

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

4. What vessel of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.

5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?

7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize at any time during the chase, and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.

8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do you put your claim? Please state all the facts in relation thereto.

10. Please state any other facts within your knowledge which you have not yet stated, tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

18 In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of W. V. BRONOUGH, a witness produced, sworn, and examined on the 31 day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is W. V. Bronough; my age, 42 years; my rank, lieutenant, U. S. Navy, and I am now serving as watch officer of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as watch officer.

3. Shortly before 6 p. m. of the 25th day of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete," of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the captures of the above-mentioned vessels the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. "Newport" was within signal distance at the time the "Paquete" was captured.

By the words "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer No. 5.

7. See answer No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

W. V. BRONOUGH,
Lieutenant, U. S. Navy.

19 Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
Commander U. S. Navy, Commanding Officer U. S. S. "Castine."

(Endorsed:) "Paqueta." Filed June 15, 1898. E. O. Locke, clerk.

In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of HENRY MORRELL, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is Henry Morrell; my age, 44 years; my rank, lieutenant U. S. *S.* Navy, and I am now serving as navigator of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as navigator.

3. Shortly before 6 p. m. of the 25th of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete" of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the capture of the above-mention' vessel the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. Newport was within signal distance at the time the "Paquete" was captured.

By the words "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer to No. 5.

7. See answer to No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

H. MORRELL,
Lieutenant, U. S. Navy.

Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
Commander, U. S. Navy, Commanding Officer U. S. S. "Castine."

(Endorsed:) "Paquette." Filed June 15, 1898. E. O. Locke, clerk.

In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP PAQUETE. } Prize.

Deposition of B. F. TILLEY, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. "Newport," on the standing interrogatories established by the United States court in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Newport" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is B. F. Tilley, commander, U. S. Navy; commanding U. S. S. "Newport," North Atlantic station; block'ing ports on north coast of Cuba.

2. I was attached to and on board the U. S. S. "Newport," commanding same.

3. About 6 p. m. April 25th, 1898, the U. S. S. "Castine" took as prize sloop "Paquette." The "Newport" was engaged at that time in taking as prize schooner "Pironeo." The "Paquete" was first chased by the "Newport," but, as it was considered possible for the "Castine" to capture her, the "Newport" was headed for the "Pironeo." The "Newport" towed the "Paquete" to Key West.

4. The "Newport" and "Castine" were in company, and the "Newport" left to chase the sails.

5. Within easy reading of ordinary flag signals.

B. F. TILLEY.

Sworn to and subscribed before me this June 15th, 1898.

J. H. BULL,
Lieutenant, U. S. N., Executive Officer U. S. S. Newport.

(Endorsed:) Filed June 15th, 1898. E. O. Locke, clerk.

21 In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP PAQUETE. } Prize.

Deposition of J. H. BULL, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. "Newport," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of U. S. S. "Newport" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is J. H. Bull; lieutenant, U. S. Navy, executive officer U. S. S. "Newport," North Atlantic station; blockading ports on north coast of Cuba.

2. To the second interrogatory deponant answers:
I was attached to and on board the U. S. S. "Newport;" executive officer of same.

3. About 6 p. m. April 25th, 1898, the U. S. S. "Castine" took as prize the sloop "Paquete." The "Newport" was engaged at the time in taking as prize the schooner "Pironeo." The "Paquete" was first chased by the "Newport," but, as it was considered possible for the "Castine" to capture her, the "Newport" was headed for the "Pironer." The "Newport" towed the "Paquete" to Key West.

4. The "Newport" and "Castine" were in company, and the "Newport" left to chase the sails.

5. Within easy reading of ordinary flag signals.

J. H. BULL.

Sworn to and subscribed before me this June 15th, 1898.

B. F. TILLEY,
Commander, U. S. Navy, Com'd'g U. S. S. Newport.

(Endorsed:) Filed June 15th, 1898. E. O. Locke, clerk.

District court of the United States, southern district of Florida.
22 In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUITA" AND CARGO. } Prize No. 16.

To the Hon. JAMES W. LOCKE, *judge of said court.*

SIR: I have the honor to report that upon examination of the testimony of the captors in the above-entitled cause, I consider that the following vessels are entitled to share in the prize, they being within signal distance and in position to render assistance, if required, viz, U. S. steamers "Castine," "Newport."

Respectfully submitted,
J. K. WINN,
Commander, U. S. N., Prize Commr.

(Endorsed:) Prize No. 16—"Paquita." Filed Oct. 3, 1898, E. O. Locke, clerk.

23 UNITED STATES OF AMERICA, ss:

[SEAL.] The President of the United States of America to the honorable the judge of the district court of the United States for the southern district of Florida, greeting:

Whereas lately in the district court of the United States for the southern district of Florida before you, in a cause between The United States, libellant and The Spanish smack "Paquete Habana" and cargo, Juan Pasos, claimant, wherein the decree of the said district court, entered in said cause on the 30th day of May, A. D. 1898, is in the following words, viz:

"This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeituer pronounced);

"Now, on motion of Convers and Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on

account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered, adjudged, and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

"JAMES W. LOCKE, *Judge.*

"Key West, Fla., May 30th, 1898."

24 As by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed,

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with damages and costs.

January 8, 1900.

And afterwards, to wit, on January 29, 1900, the following order was entered by said Supreme Court, viz:

On consideration of the motion to modify the decree entered herein by this court on January 8, 1900, and of the argument of counsel thereupon had, as well in support of as against the same, and to secure the carrying out of that decree, and of the opinion delivered on the same day, according to their true meaning and intent,

It is now here ordered by the court that said decree be, and the same is hereby, modified so as to direct that the damages to be allowed shall be compensatory only and not punitive.

25 You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of February, in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Supreme Court of the United States. No. 395, October term, 1899. The Spanish smack "Paquete Habana," &c., vs. The United States. Mandate. Filed this 19th day of Feb'y, 1900. E. O. Locke, clerk, by Louis Starke, deputy clerk.

26 At a stated term of the United States district court for the southern district of Florida, held at the city of Jacksonville, this ——— day of March, 1900:

Present: Honorable James W. Locke, judge.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "PAQUETE HABANA" and her cargo, Juan Pasos, claimant.
} Interlocutory decree.

A final degree having been entered herein on May 30th, 1898, adjudging and decreeing that the said "Paquete Habana" and her cargo of fish, be condemned, forfeited, and sold as lawful prize of war, and the said vessel and cargo subsequently, and by order of this court, having been sold under and pursuant to the said decree, and the proceeds of said sale having been duly paid into the registry of the court:

And the proctors for the claimant having this day presented to this court the mandate of the Supreme Court of the United States, dated February 13, 1900, wherein it is recited that the cause has been heard before that court on the appeal of the claimant, and that, on consideration thereof, it has been by that court, to wit, on January 8th, 1900, ordered, adjudged, and decreed that the aforesaid decree reversed,

27 and that the cause be remanded to this court, with directions to enter a decree that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo be restored to the claimant, with damages and costs.

And the said mandate having further provided, to secure the carrying out of the said decree made by the Supreme Court on January 8th, 1900, and of the opinion delivered on the same day, according to their true meaning and intent, that the damages to be allowed shall be compensatory, and not punitive.

Now, on motion of Convers & Kirlin, proctors for the claimant, it is hereby ordered, adjudged, and decreed:

(1) That the said mandate be filed, and that the said judgment of the Supreme Court of the United States be and the same hereby is made the judgment of this court;

(2) That the libel herein be and the same hereby is dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs; the question whether such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages;

(3) That the clerk of this court do cause to be paid over forthwith to the proctors for the claimant, the amount of the proceeds of the sale of the said vessel, and of any sale of her cargo, now on deposit and subject to the cheque of this court;

28 (4) That it be referred, by request of the parties, to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court, with all convenient speed, the amount of the compensatory

damages to be recovered by the claimant herein, in conformity with this decree, and with the opinion and decrees of the Supreme Court herein.

JAMES W. LOCKE, *Judge.*

Approved as to form:

HENRY M. HOYT,
Assistant Attorney-General for the United States.
JOS. K. MCCAMMON,
JAMES H. HAYDON,
Of Counsel for Captors.

29 United States district court, southern district of Florida.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "PAQUETE HABANA" AND her cargo, Juan Pasos, claimant.
} Stipulation.

It is hereby stipulated and agreed between the United States the naval captors and the above-named claimant that upon the decree entered or to be entered by this court herein, providing that the proceeds of sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, in accordance with the mandate of the Supreme Court of the United States in this case, such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, as to justice may appertain and as the legal responsibility therefor may appear; and that either party shall have the right to review the decree entered pursuant to the said mandate on the question of the amount of damages, and the United States, the naval captors or the claimant shall have the right to review such decree on the question whether the ultimate legal responsibility for such costs and damages rests upon the United States or the naval captors.

Dated, New York, February 2, 1900.

HENRY M. HOYT,
Assistant Attorney-General for the United States.
JOS. K. MCCAMMON,
JAS. H. JAYDEN,
Of Counsel for Captors.
CONVERS & KIRLIN,
Proctors for the Claimant.

30 (Endorsed:) United States district court. The United States, libellant, against the Spanish smack "Paquete Habana" and cargo, Juan Pasos, claimant. Interlocutory decree. Convers & Kirlin, proctors for claimant. Filed, Apr. 5, 1900. E. O. Locke, clerk.

31 United States district court, southern district of Florida.

Spanish schr. "Paquete Habana." Prize No. 9.

Clerk's statement.

Proceeds of sale deposited		$490.00
Paid fees prize commissioners and expenses	$33.02	
" " clerk	42.00	
" " marshal and expenses	293.29	368.31
Paid claimant under decree April 5th, 1900		121.69

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Paquete Habana." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

32 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
SPANISH SMACK "PAQUETE HABANA" AND CARGO.

Ordered, that Joseph A. Springer, esqr., of Havana, Cuba, be and he hereby is appointed to take testimony in said case, and upon filing of interrogatories and cross-interrogatories by the counsel of parties interested herein, the clerk of this court issue commission in due form for that purpose.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., June 28, 1900.

(Endorsed:) U. S. district court, southern district of Florida. United States vs. Spanish smack "Paquete Habana." Order appointing commissioner to take testimony. Filed June 30, 1900. E. O. Locke, clerk.

33 UNITED STATES
vs.
"PAQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

Interrogatories to be propounded to Jose Pazos, a witness on behalf of claimant.

1st interrogatory. State your name, age, occupation, and place of residence, and where you resided during the months of April and May, 1898.

2nd interrogatory. State, if you know, who was the owner or owners of the Spanish fishing smack "Paqueta Habana," captured off the coast of Cuba, the latter part of April, 1898, by the United States Navy during the late war between the United States and Spain; and state, if you know, what was the value of said vessel at the time of her capture and state the facts upon which you base your valuation.

3ad interrogatory. State, if, you know, how much said vessel usually earned her owner or owners per month, and your means of information as to her earnings.

4th interrogatory. State whether the owner of said vessel has an agent in the United States duly authorized to represent him in this suit; if yea, state his name and place of residence.

5th interrogatory. If you know any other facts that would be beneficial to either party to this suit, please state them a' fully as if specially interrogated thereto.

J. M. PHIPPS.

34 *Interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.*

1st interrogatory. State your name, age, and occupation, and residence, and where you resided during the months of April and May, 1898, and prior thereto.

2nd interrogatory. If you should state, in answer to the first interrogatory, that you held an official position under the Spanish Government at Havana, Cuba, state whether you were required by virtue of said position to inspect and examine and value Spanish fishing smacks that entered the harbor of Havana; and, if yea, state whether during the month' of Apr. and May, 1898, or at any time prior thereto you inspected and valued a Spanish fishing smack "Paquete Habana" and what 'as the valuation that you placed upon said vessel, and state the facts upon which you based your valuation.

3rd interrogatory. If you know anything else that would be beneficial to either party to this suit, please state as fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimants.

35 *Interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses on behalf of claimant, to be answered by each separately.*

1st interrogatory. State your name, age, and occupation, and whether you resided in Havana, Cuba, during the months of Apr. and May, 1898.

2d interrogatory. State whether you bought and sold fresh and salted fish during the months of April and May, 1898, and whether you were familiar with the market prices of fresh and salted fish in Havana during said months. If yea, state the prices of each.

3d interrogatory. If you know anything else that would be beneficial to either party in this suit, please state as fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimant.

36 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"PAQUETE HABANA," JOSE PANOS, claimant. } Prize.

The libellant, by its attorney, objects to the fourth interrogatory upon the ground that it tends to elicit answers which are not pertinent to the issue.

First cross-interrogatory. How long have you known the "Paquete Habana?" State her gross and net tonnage. State when and where she was built.

Second cross-interrogatory. State, if you know, when and where she was purchased by her present claimant, and give the name and present place of residence of the person from whom the purchase was made.

Third cross-interrogatory. How much did the present claimant pay for said vessel? State how and in what the payments were made, whether in money or in other property, and if in the latter, state what it was. State at length and in detail all the facts connected with the purchase of said vessel.

Fourth cross-interrogatory. In what business was the vessel engaged from the time of her purchase by the present claimant up to the time of her capture

37 Fifth cross-interrogatory. If you state that she was engaged in the fishing business, state whether or not she was engaged in any other business, and if so, how long, and the nature thereof; state fully.

Sixth cross-interrogatory. State how the seamen operating said vessel were compensated, whether they were paid wages or a percentage on her earnings.

Seventh cross-interrogatory. State how many trips she made in the two years next preceeding her capture, give the date of departure and entry of each trip, the quantity of fish captured each trip, the amount realized from the sale of each cargo, what part of said cargo went to the owner and what part to the seamen.

Eighth cross-interrogatory. Did the owner keep books with reference to the business of this vessel? If yea, produce the same to the commissioners, and file with your answer to this interrogatory transcripts showing the receipts and disbursements of this vessel for two years next preceeding her capture.

Ninth cross-interrogatory. Give the names of the captains and mates of this vessel from the time she was first owned by the present claimant up to the time of her capture, and their present places of residence. Also give the names of the sailors or fishermen employed on this vessel for two years next preceeding her capture, and their present places of residence.

Tenth cross-interrogatory. State whether or not any repairs were made upon this vessel during the time she was owned by the present claimant, and if so give the dates when same were made, the nature and extent thereof, the names of the persons making the repairs, and the

38 amount paid on each occasion, if more than one.

JOSEPH N. STRIPLING,
United States Atty.

Cross interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.

The libellant objects to the second interrogatory propounded to Juan Lluria y Pujadas, upon the ground that said interrogatory does not seek information as to the competency of the witness to testify upon the subjects about which he is interrogated.

First cross-interrogatory. If, in answer to second direct interrogatory, you answer that you held an official position under the Spanish Government in Havana, state what it was.

Second cross-interrogatory. State whether or not you were required to keep records of the transactions of your office.

United States Atty.

Cross-interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses on behalf of claimant, to be answered by each separately.

The libellant objects to the second direct interrogatory addressed to Francisco Gandon and Antonio Suarez upon the grounds that the price of fresh fish and salted fish in Havana, during the month of April and May, 1898, during which time the said city was blockaded by the war vessels of the United States, should not be used as a basis for assessment of damages.

39 In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
"PAQUETE HABANA," JUAN PAZOS, CLAIMANT. } In prize.

Now come the captors by McCammon & Hayden, their proctors, and without admitting that they would be responsible for any costs or damages which may be awarded in this cause, enter objections to the interrogatories which the claimant proposes to propound to the following witnesses in the course of deposition to be taken under a commission directed to J. A. Springer, esq., of Havana, Cuba:

Interrogatories to be propounded to Jose Pazos, Francisco Gandon, and Antonio Suarez.

Third interrogatory. Objected to as incompetent, irrelevant, and immaterial, for the reason that it is provided by the decree of the Supreme Court of the United States entered herein that the damages allowed to the claimant shall be compensatory only. The usual earnings per month of the "Paquete Habana" in time of peace would not tend to show what sum she could have earned during the period covered by the war between the United States and Spain, when she would have been prevented from following her customary business by the blockade of Havana and other Cuban ports.

Interrogatories to be propounded to Francisco Gandon and Antonio Suarez.

Second interrogatory. Objected to as incompetent, irrelevant, and immaterial, for the reason that the market prices of fresh and salted fish in Havana during the month of May, 1898, and a portion of the month of April, 1898, during which the United States and Spain were
40 at war, can not be taken as a fair basis for determining the value of the cargo of this vessel, for the reason that the port of Havana was blockaded by a naval force of the United States during the said period, and the prices of food supplies were thereby greatly increased. The vessel, though not liable to capture, had no right to enter a blockaded port. The value of her cargo should be determined by the market prices of fish in ports not blockaded.

McCAMMON & HAYDEN,
Proctors for Captors.

41 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"PAQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Jose Pazos, Juan Lluria Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answers to make to all and singular the direct and cross interrogatories to said commission attached, depose and answer as follows:

I. To the first interrogatory the said Jose Pazos answers and says as follows:

My name is Jose Pazos; I am 35 years of age; I am a pilot of this port, and reside in this city at No. 2 Enna st. At the time questioned about I was in command of the Spanish fishing smack, "Antonio Castelerio," belonging to Manuel Suarez.

II. To the second interrogatory he answers and says:

Dona Tusta Galban, my brother Juan Pazos, and Manuel Pazos, and myself were the owners of said vessel. We three brothers owned one-half interest in her, and Dona Justa Galban owned the other half. The vessel was valued at the time of her capture at $4,500—Spanish gold. The valuation of said vessel was based upon her cost price, which was for our one-half—$2,400—and certain repairs made upon her, but the appraised value of the vessel had at the time of her capture was $4,500.

III. To the third interrogatory he answers and says:

42 The vessels of this class, and in the business in which she was engaged, usually gave a net result of 18 to 20% upon the amount of the capital. The vessel earned about $75 profit per month. My means of information are the monthly account of her gross earnings, which were kept by Vilar Senra & Co.

IV. To the fourth interrogatory he answers and says:

Yes, Mr. Ramon Alvarez, of Key West, Fla., is the attorney in fact, and duly authorized agent of the said vessel and owners.

V. To the fifth interrogatory he answers and says:

I have nothing particular to reply in answer to this interrogatory.

Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

I have known the said vessel some 18 or 20 years; her gross tonnage I can not remember, but I believe her net tonnage is 36 tons. She was American built, but I can not state when nor where she was built.

II. X. To the second cross-interrogatory he answers and says:

She was purchased in Havana about the year 1892. We three brothers bought out the one-half interest in the vessel, which Cesareo Xejas had with Dona Justa Galban. He now resides in Casa Blanca.

III. X. To the third interrogatory he answers and says:

We paid Mr. Xejas in cash $2,400 Spanish gold for this one-half. The usual deed or bill of sale was made out and recorded.

IV. X. To the fourth cross-interrogatory he answers and says:

The "Paquete Habana" was engaged in the fishing business.

V. X. To the fifth cross-interrogatory he answers and says:

43 She was always engaged in that business and no other.

VI. X. To the sixth cross-interrogatory he answers and says:

Vilar, Senra & Co. paid us for the live or fresh fish brought into the port by said vessel at the rate of $10 Sp. silver per quintal, of which two dollars was first deducted for an allowance for the shipowners, and of the remaining $8 two-thirds was given to the seamen or fishermen, leaving one-third for the owners. This vessel did not at any time bring salted fish.

VII. X. To the seventh cross-interrogatory he answers and says:

This vessel did not make probably more than 17 trips in the two years next preceding her capture. I can not state from memory the dates of departure and entry, nor the quantity of fish of each trip, but estimate this at 30 quintals on an average, nor the exact amount realized from the sale of the cargoes. These data probably appear particularized in the books kept by Vilar, Senra & Co. I have stated that one-third with a certain allowance went to the owners and two-thirds went to the seamen. Should it appear in the settlement of this case and in payment of any ward that any part thereof belongs to the seamen we bind ourselves and become responsible for the settlement and payment to them of same.

VIII. X. To the eighth cross-interrogatory he answers and says:

No books were kept by us with reference to the business of this vessel. I can not therefore produce and file any extracts to show receipts and disbursements. Each trip's business was liquidated at the moment.

IX. X. To the ninth cross-interrogatory he answers and says:

44 Juan Pazos was acting as "patron" or master at the time of her capture. Her former master from the time we owned her was Jose Casteleiro. Pazos now resides in Corunna, Spain. Jose Casteleiro and my other brother, Manuel Pazos, were employed on the vessel as seamen or fishermen at the time of her capture. There were then only the three on board. I can not state who were employed on the vessel previously; their names probably appear on the crew lists of the vessel, which I understand are on file before the court.

X. X. To the tenth cross-interrogatory he answers and says:
No repairs to any great extent have been made on this vessel beyond those stated as having been made upon her previous to her appraisement.

JUAN PAZOS.

Answered under oath and subscribed before me at Havana this 28th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 JUAN LLURIA Y PUJADAS.

I. To the first interrogatory, the said Juan Lluria Pujadas answers and says as follows:
My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation; I am also maestro mayor de bahia, or harbor master of this port; at the time mentioned April and May, 1898, and prior thereto I resided at the same place and with the same business.

II. To the second interrogatory he answers and says:
The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about thirty years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack "Parquete Habana" to be worth on the first of March, 1898, $4,500 Spanish gold. Basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer and of which I now produce a copy (translated) of the part thereof referring to the "Parquete Habana," to be filed for convenience with this declaration "Exhibit A."

46 Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:
The position that I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:
No, I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense of repairing, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana, this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, an expert appointed by Messrs. Vilar, Senra & Co., and Bengochea & Co., to appraise the value of their respective fishing smacks in the condition in which they were in the first day of March, of this year.

Do hereby certify that, owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack "Paquete Habana," registered, folio 1996, of 28 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast, capstan, two anchors and chains, galley caboos and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition I appraise in the sum of $4,500 Spanish gold.

* * * * * * *

In testimony whereof I have issued this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

47 I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in the case of Antonio y Paco, and referring to the vessel named in this commission, the "Parquete Habana."

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. The "Parquete Habana," Jose Pazos, claimant, this paper marked "Exhibit A," was produced and shown to the witness Lluria Pujadas and by him deposed unto and subscribed at the time of this examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided at Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish were sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish were sold at the same price, $10 (ten dollars), silver, per qq. These were market rates.

III. To the third interrogatory he answers and says:

48 Before the blockade was declared, fresh fish were sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and one-half to four dollars), silver, per quintal. These prices gradually rose, as soon as the blockade was declared, to $10, silver, per quintal. Live or fresh fish were never lacking, as it was supplied from the South coast via. Batabano, while salted fish became very scarce.

FRCO. GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ.

I. To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra & Co. That was my occupation at the time mentioned in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna st.

II. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish and salted fish and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898. The prices at that time were $10 (ten dollars), silver, per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars), Spanish gold, per quintal.

III. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During previous years the usual market price of live

49 or fresh fish was $7 (seven dollars), Spanish silver, per quintal, and for salted fish from three to four dollars, Spanish silver, per quintal. On account of the blockades established by the United States about Apirl 21st, the price of fresh fish gradually rose to the price that I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana, this 25 day of Aug., 1900.

JOSEPH A. SPRINGER.

CITY OF HABANA, *Island of Cuba.*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Jose Pazos Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on the said oath answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respectfully made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof, I have hereunto set my hand and affixed my seal at the city of Havana the 29 day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"PARQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

To Joseph A. Springer, commissioner, Dr.

For taking testimony of witnesses in above cause, interpreting, etc..... $20.00

Havana, August 29, 1900.
Received payment from claimant's attorney.

JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) The United States vs. "Paquete Habana," Jose Pazos, claimant. Commission. The execution of the within commission appears in a certain schedule hereto attached. Havana, Aug. 29, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, Clerk.

51 In the United States district court, southern district of Fla.

In re fishing smack cases.

JOHN F. HORR, being duly sworn, on behalf of the United States testified as follows:

Q. What position did you hold under the United States, if any, in the month of June, 1898?

A. United States marshal.

Q. For the southern district of Florida?

A. For the southern district of Florida.

Q. Were you acquainted with the Spanish fishing smack "Quatro de Septembre?"

A. Well, she was a prize brought in there. I saw her.

Q. Did you sell her?

A. Yes, sir.

Q. In a condemnation sale?

A. Yes, sir.

Q. State what she brought, please.

(Objected to as immaterial and irrelevant, and as not affording the proper measures of damages in this case.)

By COMMISSIONER. I will state, Mr. Stripling, that I will take cognizance of what they brought as a matter of record.

A. Four hundred and seventy dollars.

Q. Where have you resided, Captain, most of the time since the civil war?

A. In the United States; the last twenty-five or thirty years in Florida, at Key West.

Q. Have you ever owned any sailing vessels?

A. Yes, sir; small sailing vessels.

52 Q. How many?

A. I have been interested in six or more vessels; have owned, built, and partly owned six or more.

Q. Captain, have you kept yourself posted, during your residence in Key West, of the value of vessels of the character of the "Quatro de Septembre?"

A. I wouldn't like to say that I have. She is a fishing smack, and a class of vessel I haven't had anything to do with.

Q. You saw her?

A. Yes, sir; small vessel.

Q. No material difference between that vessel and any other sailing vessel of the same type, except for the fact that she had a well in her?

A. Yes; she had a well.

Q. Does that add very materially to the cost of a vessel?

A. It would some.

Q. I am talking about the cost of construction.

A. I don't know; cost more, I suppose. How much more I would not like to say.

Q. About what percentage would you estimate it would cost more than an ordinary vessel?

(Objected to. Captain Horr says that he has had no experience in it.)

Q. From your knowledge of the construction of boats generally, would a vessel of this character necessarily be more expensive in constructing?

A. Yes; I think so; a little.

Q. What percentage would you say?

(Objected to on the ground that no sufficient foundation laid.)

A. I don't know.

Q. Captain, can you give an estimate based on figures and a knowledge of boats, so as to be reliably an estimate?

think it would be a reliable estimate.

53 Q. Well, from the appearance of this vessel, and the examination you made of it while she was in your custody, what would you consider a fair valuation for her?

(Objected to on the ground that the witness has stated that he has had no experience with fishing-smack vessels and their values, and that there has been no statement of the witness as yet that he has made a sufficient examination of the vessel upon which to form the ground for an expert opinion.)

Q. State what kind of examination you made of her, Captain.

A. I don't recollect that I made any particular examination of her. I examined some of them, and went into their hold, but can't remember

which ones. I recollect one that I made a pretty thorough examination of.

Q. These parties value their vessel at $5,000.00. From her appearance at the time she was in your possession, what would you consider a fair valuation for her?

(Objected to on the ground that the value of this vessel is to be determined upon the fact that this vessel was a Spanish or Cuban fishing vessel. Objection sustained; to which ruling counsel for the Government excepts.)

A. I would say one thousand dollars at the outside for that vessel. It is pretty fair to assume that she would not bring any more than that, or those fish men around there would have got her.

(Motion to strike the answer, on the ground that no proper foundation has been laid for the question, and the further ground that the value at Key West, of which the witness speaks, is improper and irrelevant. Motion is granted; to counsel for the Government excepts.)

Q. You have stated that one thousand dollars, in your opinion, would be a fair valuation for this vessel. Now state fully upon what you base that estimate.

54 (Same objection.)

A. According to her age and condition at the time of sale and the price that she sold at.

Q. State whether or not she was a newly built vessel.

A. My impression is that she was one of the old boats.

Q. Do you know what the cost per ton to build a vessel of that kind is?

(Same objection.)

A. No; I do not. I know what it would cost per ton at Key West. Know what I have had them offer to build for me for.

Q. About how much?

(Same objection.)

A. I know of one contract which was let at ninety dollars per ton for building a wooden vessel. Now, that ninety dollars does not mean running, rigging, anchors, chains, etc.

Q. Now, do you remember the "Poder de Dios?"

A. Only in a general way.

Q. How much did she sell for?

(Same objection.)

A. My recollection is, a little over a thousand dollars—a thousand and ten dollars, she sold for.

Q. She is valued by the owner at four thousand dollars. Do you consider that a fair price for her?

(Objected to as immaterial and irrelevant as applied to American vessel value, and also because sufficient foundation has not been laid for the question.)

A. I consider it excessive, estimating the value in this country.

Q. What would you consider a fair price for her, from your recollection of her condition?

(Same objection.)

A. Now, I suppose you mean to Key West, do you?

Q. Yes, sir.

55 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat—some of them were run down, and some were in pretty good condition—it is hard for me to distinguish at this time.

Q. You sold the "Espana," didn't you?

A. Yes, sir.

Q. This vessel is valued by the owner at nine thousand dollars. State from your present knowledge of her condition whether you consider that excessive, and what you would consider a fair valuation for her.

(Same objection.)

A. I consider nine thousand dollars excessive. She was a Cuban-built boat and at that time fourteen years of age, and I consider three thousand or thirty-five hundred dollars a fair valuation.

Q. How much did she sell for when you sold her?

(Same objection.)

A. Thirteen hundred and ten dollars.

Q. The "Paquete Habana," she is valued at forty-five hundred dollars by the claimants in this case. From your present recollection of her appearance and condition, state whether or not this is excessive, and if so, what, in your opinion, would be a fair valuation.

(Same objection.)

A. The "Parquete" was a small sloop smack; I don't recollect about her age. I knew about her age at that time, but don't recall now. She sold for four hundred and ninety dollars. Considering her age and size I would think fifteen hundred dollars would be a fair valuation for her.

Q. The "Oriente," according to this testimony, is forty-six and fifty one-hundredths tons. Do you remember that vessel?

A. No; I don't remember her particularly. She was one of

56 the largest.

Q. She was valued at five thousand dollars. State whether or not you consider that a fair valuation.

A. Considering her age, I consider it excessive.

Q. From your recollection of the age and condition of the boat, what would you consider a fair valuation?

(Same objection.)

A. It is a difficult matter for me to remember the condition the boat was in. I can't possibly place a valuation, on account of not recalling her condition.

Q. Did you sell the "Engracia?"

A. Yes, sir.

Q. What did she bring?

(Objected to as immaterial and irrelevant and not constituting a proper measure of damage.)

A. Sold for one thousand dollars.

Q. The claimants to that vessel value her at five thousand five hundred dollars. From your present recollection of that vessel, and her condition, state whether or not you consider that a fair valuation; and if not, what would you consider such.

(Objected to as immaterial and irrelevant as far as regards value at Key West, and further on the ground of insufficient foundation has been laid for the question.)

A. I consider five thousaud and five hundred dollars excessive, but can not recall the condition of the vessel sufficiently well to estimate her value at Key West, further than the price realized at the sale.)

Q. How much did she bring?

(Same objection.)

A. One thousand dollars.

Q. Did you consider the price that she brought at that time under her real value; and if so, how much?

57 (Same objection.)

A. I can not recall well enough.

Q. Do you remember the "Santiago Apostel?"

A. Yes, sir.

Q. According to the testimony here she appears to have been built in 1890; and if valued at one thousand dollars, state whether or not you consider that a fair valuation.

(Same objection.)

A. I consider it excessive in Key West.

Q. What would you consider a fair valuation for her, assuming that she was built in 1890 and cost nine thousand and eighty dollars originally?

(Same objection.)

A. I would consider five thousand dollars about her value in Key West.

Q. How far is Key West from Havana?

A. Eighty-five miles.

Q. "Antonio Suarez." This vessel is valued at ten thousand dollars Spanish gold. You sold the "Antonio Suarez" also?

A. Yes, sir.

Q. How much did she bring?

(Objected to as immaterial and irrelevant and as not affording a proper measure for damage.)

A. Twelve hundred and sixty dollars, she sold for.

Q. State whether or not you consider that a fair valuation.

(Objected to as irrelevant and immaterial and not affording a proper measure of damages. To avoid a repetition of the objections, it is understood that the objections to the prices realized for the boats in Key West is taken subject to the objection of counsel for the claimants; that

58 said objection is that the testimony is immaterial and irrelevant and does not afford proper measure for damages, and that the opinion of the witness as to the valuation of vessels in Key West is immaterial and irrelevant and does not afford proper measure for damages; and that the proper foundation has not been laid for the formation of an expert opinion. It is understood that the same rulings and exceptions are deemed to apply in each case.)

A. I consider it excessive; considering her age and everything, three thousand dollars at the outside.

Q. Captain, the "Serverita" is valued at eight thousand dollars. State, from your present recollection of the boat and her condition, whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive.

Q. What would you think a fair valuation?

A. I can't recall her condition well enough to place a valuation on it.

I would say the eight thousand dollars excessive, from her tonnage and her age. Her tonnage could be rebuilt at Key West for much less.

Q. Did you sell the "Fernandita?"

A. Yes, sir.

Q. How much did she bring?

A. Five hundred dollars.

Q. The "Fernandita" is valued at five thousand and five hundred dollars by the present claimants. State whether you consider that excessive.

A. Very much so, sir.

Q. What would you consider a fair valuation for her?

A. I don't recall her condition well enough to place a valuation on her.

59 Q. You sold the "Lola," did you?

A. Yes, sir.

Q. How much did she bring?

A. Eight hundred thousand dollars.

Q. She is valued by the present claimants at five thousand dollars; state whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive in the United States, in Florida and Key West, because I know such a vessel could be built for considerably less money.

Q. "Antonio y Paco," this vessel is valued on the first of January, 1898, by the present owners, at eight thousand two hundred and fifty dollars. State from your present recollection of her condition whether or not you consider that a fair valuation.

A. I do not; I consider it excessive.

Q. What would you say was a fair price for her?

A. Taking into consideration the prices that boats sold for that were taken to Havana, I would consider thirty-five hundred dollars a fair price for that vessel. I make this answer, believing that this vessel was formerly the "Emma Lowe."

Q. Have you any knowledge of what it cost to build the "Emma Lowe" in Key West?

A. My impression is that John Lowe said that she cost him five thousand dollars—or it may have been a little more than that. After several years he sold her for thirty-five hundred dollars.

Q. Did he sell her on account of depreciation or the tariff on the fish business?

A. I assume that it was on account of the fish tariff.

Cross:

Q. Captain, all of the values that you have given with reference to the different vessels have been values at Key West?

A. Yes, sir.

60 Q. You don't propose, as I understand it, to speak of values in Havana?

A. No, sir; don't know anything about them, other than what I have known them to pay for vessels coming over to Key West.

Q. Do you know anything about exchanging or transferring a foreign vessel to the Cuban flag, and obtaining license to engage in the fishing business in Havana?

A. No, sir.

Q. You have carried in your mind—I judge from the figures you have given—a notion that boats can be duplicated in Key West, Fla., at about ninety dollars a ton?

A. Yes; that is what they offer to build at.

Q. Now, these offers to build, in respect of which you have testified, have not been for the building of fishing vessels, have they?

A. No, sir.

Q. Are you speaking of ordinary smacks?

A. Yes, sir.

Q. Now, it is a fact, is it not, that the bulkhead of these tanks have to be made practically as strong as the vessel, and that the location of a tank in a vessel interferes with the placing of the beams as they would be placed if there were no tanks?

A. No; not the beams, but it is the ribs; the fore and aft stringers and the ribs.

Q. And the strength which would otherwise be obtained from braces, which have to sacrificed in a construction of tanks, must be provided for in some other way in the construction of a fishing boat?

A. Yes, sir.

Q. Then would this not add to the cost of construction?

A. Yes; I think it would cause a certain difference in the cost
61 of construction.

Q. Of which you do not advance any opinion?

A. Other than in a general way.

Q. Without any experience as to the building of fishing boats?

A. No, sir; none whatever as to fishing boats. I have built a sloop and rebuilt a vessel or two, but have never built any smacks.

Q. Now, Captain, in placing these values of the different vessels at the figures that you have given, where you have given figures, you have not been informed as to whether the boats have been repaired, rebuilt, or overhauled in Cuba, and I understand you to say you have made no special examination of the construction of most of the boats?

A. With the exception of two, I made no careful examination.

Q. The employment of boats of this class from Key West would no longer be profitable, would it?

A. No, sir; not with the laws that they had at that time.

Q. When did the change in the laws to which you now refer take place?

A. I think it must have been in 1897 or 1898.

Q. And about that time were all boats of that class that were then under the American flag go out of business?

A. I think they did.

Q. What was the change of law?

A. Well, I always supposed it was on account of an import duty put on fish over in Cuba.

Q. These changes of law you speak of were in Cuba?

A. Yes, sir.

Q. When the American fishing boats of that class were engaged in the fishing business, what was their principal market?

A. Havana.

Q. And it was some discriminating restrictions that were imposed there that drove them out of the business?

A. Yes, sir; either port duties or duties on fish.

62 Q. Now, Captain, it is a pretty difficult matter, is it not, to form much of an opinion of the value of a boat, built some years ago, when you do not know how well she has been kept up and rebuilt and repaired?

A. Yes, sir; a man who is not familiar with a boat's construction, it is pretty hard to get at her value.

Q. Some old boats when rebuilt are practically as good as new, are they not?

A. I think so; yes, sir.

Q. Now, prior to the time that my learned friend here requested you to come in and express your opinion of these boats, have you turned these questions over in your mind since you sold them three years ago?

A. No, sir.

Q. And the opinions that you have expressed were those that occurred to you at the moment of your examination, without any previous examination?

A. Yes, sir.

Q. At the time you saw the boats, and sold them, you were marshal of the court for this district?

A. Yes, sir.

Q. Are you still the marshal for this district?

A. Still the marshal of this district.

Q. What became of the fish that the boats had on, do you know?

A. Well, quite a number were distributed to the crews of these vessels and some were given to the revenue cutters, and a good many died and were dumped overboard.

Q. The vessels were in custody quite a long time before they were sold, were they not?

A. Yes, sir; they were sold the 27th of June, if I recollect. They were there, the last ones, a month and a half.

63 Q. There was no sale of any fish, was there?

A. No, sir.

Q. There is nothing on the records to show any returns or proceeds of the fish?

A. No, sir; we thought of trying to sell them, but there was no market for the fish then, so we distributed them.

(Endorsed:) United States vs. Sloop "Paquete Habana." In re fishing smacks. Evidence taken before Commissioner E. O. Locke. Filed August 6th, 1901. E. O. Locke, clerk.

64 In the district court of the United States, southern district of Florida. In admiralty.

UNITED STATES OF AMERICA *vs.* "SEVERITA," "SANTIAGO APOSTOL," "FERNANDITO," "ESPANA," "PODER DE DIOS," "ANTONIO SUAREZ," "ORIENTE," "CUATRO DE SEPTIEMBRE," "ANTONIO Y PACO," "LOLA," "ENGRACIA," and "PARQUETTE."	Claims by owners for compensation.

The examination of witnesses de bene esse beginning on the 7th day of October, 1901, on behalf of the United States, before me, Beverly B.

Whalton, county judge of Monroe County, Florida, at my office in the city of Key West, in said county, in the above entitled cause.

It is hereby stipulated and agreed by and between counsel for the United States and the claimants, respectively, that the testimony hereto appended and taken as aforesaid may be written and transcribed by a stenographer; and that the several signatures of the respective witnesses whose testimony is hereto appended, are severally waived.

I. A. ZACHARIAS,
Assistant U. S. Attorney.
J. M. PHIPPS,
Of Counsel for Claimants.

65 SAMUEL CATES, Esq., a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, place of residence, and occupation.

A. Samuel Cates; age, 54 years; live up in James street, city of Key West; occupation, the sponge business.

Q. How long have you been engaged in the sponge business?

A. I guess about 20 years.

Q. Are you familiar with the selling of vessels and the values thereof?

A. Yes, sir; I know all about it.

Q. What opportunities have you had for observing the selling of vessels and becoming acquainted with the values thereof?

A. Well, in buying and selling, and etc.

Q. You have traded in vessels for some years?

A. Yes, sir; I have.

Q. Do you know the fishing smack "Espana," seized as prize in the late war?

A. Yes, sir.

Q. Did you make an examination of that boat?

A. I did, after I bought it.

Q. About when was that?

A. I could not answer.

Q. Approximately, when?

A. Somewhere about the time the Spanish-American war was declared I bought it and examined it.

Q. You say you bought the "Espana?"

A. Yes, sir.

Q. What did you pay for her?

A. I paid $1,310.00 for her.

66 Q. What was the result of your examination of said vessel?

A. Well, in examining her I found that the vessel was in a pretty bad condition, the hull and some of her sails.

Q. Was the price you paid for her a fair value?

A. Well, no, sir; I didn't think it was a fair value. I thought the vessel was worth more than she brought. Well, I offered to sell it to the owners for $3,500. They would not give that much money.

Q. What did you sell it for?

A. For $2,500.

Q. About what was her tonnage?

A. Was 53 tons when I bought it. Afterwards she was cut down some and remeasured to 48 tons.

Q. What repairs did you put on her before selling her?
A. Well, I don't know about how much repairs I put on her.
Q. State what they were.
A. Well, I had some pieces put into her planks and I had some timbers put on her bow. I think that was about all the repairs I had done.
Q. You say her hull was in a fair condition?
A. Yes, sir.
Q. Under what circumstances was this vessel purchased by you?
A. Well, she was taken by ships, I believe, and brought here, and she was sold by the Government, and I bought her at public auction.
Q. Was there much bidding at this?
A. Yes, sir; there was considerable bidding.
Q. Were there many persons present?
A. There were a considerable number of persons present at the time of the auction.
67-68 Q. Were those persons interested in vessels of this class?
A. There were some in that business and there were lots who were not.
Q. This you say was at the sale made by the marshal at public auction?
A. Yes, sir.
Q. That is when you bought this vessel?
A. Yes, sir.
Q. Did you at that time examine the vessel called the "Oriente"?
A. No, sir; I did not.
Q. About how old was this vessel when you purchased her?
A. I could not say.
Q. What price did you pay for her?
A. $1,310.
Q. And you sold her for $2,500?
A. Yes, sir.
Q. About what did the repairs cost, and did you do them yourself?
A. No, sir. Well, all the repairs I had done to her cost from $150 to $200.
Q. Would you say that she was in much better shape after you repaired her than before?
A. Yes, sir; I say she was in a little better shape than when I bought her.
Q. Would you say such repairs increased her value materially?
A. It increased the value a little.
Q. About how much would you say?
A. Well, I say, according to what I had done, about $150 or $200.
Q. No more than the actual amount you expended on her?
A. No, sir.
69 Q. Did you know if anyone else than yourself bid on said vessel?
A. Yes; several bid on her.
Q. Were you the highest bidder?
A. Yes, sir.

Cross-examination:

Q. What kind of vessel was this and what was she employed in?
A. In the smack business.

Q. When you say she was employed in the smack business, do you mean to say the fishing-smack business?

A. Yes, sir.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. No, sir.

Q. Do you know, Mr. Cates, when the tonnage of the "Espana" was reduced here from 58 tons to 48 tons?

A. It was somewhere about that time; I can not remember rightly when she was taken and brought here.

Q. When was she remeasured?

A. When she was measured here she was 48 tons; I don't know anything about that part of it.

Q. Do you know whether there is any difference between the Spanish rule of measuring vessels and the American rule?

A. No; I don't know that there is any difference.

Q. Had this vessel, the "Espana," been cut or reduced before she was measured at Key West by the custom-house authorities?

A. No; she was measured before she was cut down.

Q. Was there any fishing-smack business being carried on
70 between the United States and Cuba at the time or about the time you purchased this vessel?

A. No, sir; there were no smacks here at this time, excepting the smack we bought.

Q. At the time of that sale, of which you have spoken, was there any demand at Key West for fishing smacks?

A. Well, at that time, when we bought these smacks, of course we thought there would be a demand for them, but there was none up to that present time.

Q. Is it not a fact, Mr. Cates, when vessels are sold here at public auction, are there not always a large crowd present?

A. Yes, sir; there most generally is.

Q. To whom did you sell that vessel?

A. I sold it to the same owner that it belonged to before.

Q. What did you get for her?

A. I got $2,500.

Q. Why did you sell it?

A. Because I had no use for it.

Q. Did you buy her for speculation?

A. No, sir; I did not buy her for speculation; I bought her with the intention of keeping her.

Redirect:

Q. You said there was no demand for such vessels; you also said there was quite a number of bidders?

A. Yes, sir.

Q. Please explain.

71 A. At that time, I can explain, that before these smacks had come here we had no demand for them, but when he bought these smacks we bought them with the intention of keeping and using them here. It happened to be there was no demand in that business, so afterwards we could not do anything with them and sold them.

Q. Then your intention to use them for fishing purposes did create a demand for such vessels?

A. Yes, sir; at that time.

Q. By that time, you mean the time of the purchase?

A. Yes, sir.

Q. Was the war still going on at the time of your purchase?

A. No, sir; the war was over.

Q. You said, in cross-examination, that there is always a crowd present in Key West at the selling of vessels, is that not due to the fact that a large number of people in Key West buy, sell, and trade in sailing vessels?

A. Yes, sir.

WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, residence, and occupation.

A. William D. Cash; age, 66 years; residence, Key West; occupation, a merchant.

Q. Mr. Cash, are you acquainted with the values of sailing vessels of a similar class?

A. Yes; I am, for the reason that I have bought and sold them during my business career.

72 Q. Do you recollect the sale of the twelve fishing smacks seized as prizes of war during the Spanish-American war?

A. I remember the sale of the fishing smacks; as to the number I do not know?

Q. State, if you recollect, the date of that sale?

A. I do not recollect.

Q. Do you know the fishing smacks known as the "Poder de Dios" and the "Antonio y Paco?"

A. Yes, sir; I know those two as sold.

Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?

A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910; and the "Poder de Dios," $1,010.

Q. Did you, prior to the purchase or subsequently, ever make an examination of said vessels for said firm?

A. A few days prior to the sale Mr. Curry and myself went on board of these smacks, made an examination as to their condition and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination.

A. From examination we found that the two vessels were in a very fair condition; one of them, the "Antonio y Paco," was of more value than the "Poder de Dios," then we determined when the sale came off what prices we would pay for one and the other.

73 Q. From your knowledge of the values of sailing vessels, would you say that the prices paid by you, for each vessel, respectively, were the fair purchase prices?

A. We concluded, at least we set a price that we thought each one was worth, and at the time of the sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

Q. Then, I understand you to say, that you paid, approximately, the prices which upon examination you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900, and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes, there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

A. To change the speculation we found that it would be necessary to make some repairs, but for matter of sailing we had not considered that proposition whether we should repair them or not, if so it would be necessary to make some repairs.

74 Q. Do you recollect the tonnage?

A. I do not know.

Cross-examination:

Q. Have you ever been engaged in buying and selling fishing smacks?

A. Yes, sir.

Q. You say in your direct examination that you bought these vessels for speculation, or for the purpose of engaging in the fishing business if that industry should be revised?

A. Yes, sir.

Q. When did you sell these vessels?

A. We sold them a short time after. Mr. Curry sold the vessels while I was away.

Q. Owing to the fact that such sales are largely attended, did not the persons who attended these sales usually pay more or less for vessels of any kind that may be offered for sale?

A. Well, at the time of sale there is, of course, quite a large number of people gathered there. Some are lookers-on and some are bidders; it is pretty hard for me to tell whether they were bidders or lookers-on. At the time of bidding I think competition was pretty lively.

Mr. MILTON CURRY, a witness on behalf the United States, being first duly sworn, testified as follows:

Q. Please state your name, age, place of residence, and occupation.

A. Milton W. Curry; age, thirty-four years; residence, Key West; occupation, a merchant.

Q. How long have you resided in Key West.

A. Thirty-four years.

75 Q. Have you any opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. Yes, sir.

Q. Have you bought and sold sailing vessels?

A. No.

Q. Have you come in contact or had opportunities to know the facts of purchases and sales of vessels?

A. Yes; I know the prices paid for some smaller-size sailing vessels under a hundred tons.

Q. Which do you recollect, the sale by the United States of the twelve (12) fishing smacks, seized as prizes of war?

Q. Do you recollect when?

A. It was in the summer of 1898.

Q. Do you know of the fishing smacks "Severita" and "Lola Engracia"?

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you at or near the time of purchase make examination of said vessel?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew who were on the vessel at the time of seizure.

76 Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

Q. What did you pay for said vessels?

A. $800 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the age of the vessels at previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing, in reference to their use?

A. I thought that under a change of government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00, the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas and I put some repairs on them, I suppose, between $50 or $100. I really don't know the estimate. The other repairs were ordinary such as any other vessel requires in ordinary use, such as painting and etc.

Q. Did these vessels require all these ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked; I made the repairs on her.

Q. Was the "Severita" painted when you sold her or any other repairs done outside?

A. Nothing that I know.

77 Cross-examination:

Q. Mr. Curry, did you ever buy or sell any fishing smacks, other than those you have testified to?

A. No, sir.

JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. John Lowe, residence Key West, occupation a merchant.

Q. Have you had opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. I have.

Q. Have you bought, sold, or traded in sailing vessels?

A. I have.

Q. For what number of years?

A. I have for about thirty years.

Q. Do you recollect the sale of the fishing smacks by the Government?

A. Yes, sir.

Q. About when was that made?

A. I don't recollect the date.

Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"

A. Yes, sir.

Q. Did you make an examination of those vessels at the sale?

A. No, sir.

Q. Did you purchase those vessels?

A. Yes, sir.

Q. What prices did you pay for them, respectively?

A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."

78 Q. Upon what did you base your value?

A. I merely went to the auction on the day of sale out of curiosity and when those vessels were offered I thought the prices reasonable and I purchased them.

Q. Did you examine them after the sale?

A. Yes.

Q. What did you find their condition to be?

A. Medium fair.

Q. Did you make any repairs on them?

A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.

Q. Did you sell them subsequently?

A. Yes, sir; the "Cuatro de Setiembre" was sold for $1.500 and the "Lola Engracia" for $2,000.

Q. At the time of the purchase by you, would you say, from the condition of the vessels, were the prices paid by you fair?
A. One of them I thought was fair.
Q. Which one?
A. The "Lola Engracia," the "Cuatro de Setiembre" was sold cheap.
Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?
A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?
A. I do not recollect. About the same time they were all sold to a party, or near the same time.
Q. All disposed of at the same time?
A. Yes, sir.
79 Q. Did you know how these two vessels were equipped, and what was their special equipment?
A. As fishing smacks.
Q. Did you know what was their dimensions when you bought them?
A. Not at the time I bought them.
Q. Whom did you sell them to?
A. To parties in Havana.
Q. Now, at the time of this public sale, was there any demand for fishing smacks at this port?
A. I don't think there was.
Q. What did you base your estimate of the valuation of these two vessels on, your own knowledge or from information obtained from others?
A. One of the vessels I know had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.
Q. Have you ever had fishing smacks built for yourself in Key West; and if so, what was about the cost of building such vessels?
A. I had two built, the "Emma Lowe" and "City of Havana;" each cost me about $10,000.
Q. What was their tonnage?
A. 49 tons.
Q. Was there any fishing-smack business going on at the time of the sale?
A. There was not then.
Q. Mr. Lowe, for what purpose did you purchase these two vessels?
A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?
A. There were several bidders and a little competition.
80 Q. How soon after you purchased these vessels did you make your examination of them?
A. I went on board the same day and put them on the dock about a week afterwards.
Q. Do you recollect the tonnage, approximately?
A. The "Cuatro de Setiembre" 29 tons, and the "Lola Engracia" 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or twenty years old; the "Cuatro de Setiembre," I don't know her age, I should judge she was about ten years old.

Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, place of residence, and occupation.

A. Alfred Atchison; age 42 years; residence Key West; occupation seaman.

Q. How long have you been following that?

A. Twenty-two years.

Q. Are you familiar with sailing vessels?

A. I am—sailing vessels under 100 tons.

81 Q. In the course of your occupation and observation, have you become familiar with the value of sailing vessels?

A. Yes, sir; pretty well.

Q. Do you know the vessel "Santiago Apostol?"

A. Yes, sir.

Q. Do you recollect the sale of said vessel by the United marshal?

A. Yes, sir.

Q. Do you recollect the time of that sale?

A. I think it was in 1898?

Q. Did you purchase said vessel?

A. I purchased her.

Q. Did you, at or near the time of your purchase, make an examination of the "Santiago Apostol?"

A. I did.

Q. State what you found her to be.

A. She was in good condition.

Q. State, Mr. Atchison, her tonnage.

A. I don't exactly what her tonnage was. She had to be remeasured.

Q. Will you state, with reference to the different purchases, what condition you found her to be in—the helm, masts, rigging, and etc.?

A. The helm was in good condition. Well, everything else was in a pretty good condition, excepting her mainsail was not in a good condition, but we had used it two or three trips.

Q. Then you repaired her?

A. Made some repairs.

Q. From your knowledge of the value of sailing vessels, what would you say was her value at the time you purchased her?

A. All that depends on condition.

82 Q. Well, what would you consider at that time a fair market value at the time you purchased her?

A. At that time, well, on speculation, I suppose about $5,000, she would have brought from the business which I expected to go into when I bought her she would have been worth more.

Q. What did you pay for her?

A. $2,700.

Q. What did you sell her for?

A. $4,000.

Q. Did you consider that a good and fair price for her?

A. Yes, sir; under the circumstances.

Q. Did you get all that you could for her?

A. No; I don't think so.

Q. Then you took less than you could have gotten for her?

A. Yes, because I complicated myself so that I had to sell.

Q. O, I understand you to say that you could have sold to either one of two parties, and choose the one who would pay the lesser amount?

A. I could not choose.

Q. To whom did you sell?

A. I sold to parties in Havana.

Q. Did you make any other repairs besides that of the mainsail?

A. Some other repairs which we had damaged ourselves.

Q. Did you at or about that time examine the boat "Oriente?"

A. Yes.

Q. Did you know her condition?

A. Yes.

Q. About what would you say she was worth?

A. I should judge she was worth about $3,500; I mean this conditionally; I mean that if the Cuban markets were open to us, the vessel was worth more; I state if the Cuban markets were closed to us, she was worth what you could sell her for.

83 Q. Cuban markets, for what do you mean?

A. For fishing business.

Q. Have the Cuban markets been open to the fishermen of this country since?

A. No; not that I know of.

Q. Then that vessel has not been worth the sum you stated since that time?

A. No; I don't suppose she was.

Q. Could you not give any idea what she is worth here?

A. I suppose about $2,500 or $3,000.

Q. Mr. Atchison, what was your occupation in the early part of the year 1898?

A. I was deputy marshal.

Q. As deputy marshal did you have the fishing smacks in your care or custody?

A. Yes, sir.

Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?

A. I did, sir.

Q. What was the result?

(Objected to as not being proper cross-examination, except in so far as the question refers to the two vessels referred to in the examination in chief.)

A. All were in generally good condition, except one.

Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?

A. Well, I consider there are other considerations. If the market were free to us to sell fish in Cuba, the vessel would have been worth $2,500, to my opinion; not opened to put her on speculation.

84 Q. I understand you to say here that all the vessels were in a good condition?

A. Fair as regular vessels are—as vessels are generally.

Q. Was there any fishing-smack business carried on at Key West with Cuba at the time of this public sale?

A. No.

Q. Do you know whether there was any demand at that time in Key West for fishing smacks?

A. No.

Q. What become of all these vessels?

A. They were all sold back to the people in Havana.

Q. What value were they to the people in the United States if they could not use them in the fishing business?

A. Well, there were some other uses they could have been put to.

Q. Can you estimate the value?

A. No; because there is no business of that character going on between Cuba and the United States.

Q. Did you ever have any fishing smacks built for your own use?

A. No.

Redirect examination:

Q. Do you mean that the fish which might be caught here be valueless to those smacks, except for shipment to Cuban ports?

A. I do.

Q. About how old were these smacks?

A. I do not know the age of any.

85 WILLIAM REEDY, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. What is your name, age, residence and occupation?

A. William Reedy; age, fifty years; residence, Key West; occupation, liquor dealer.

Q. Have you had opportunities for observing sailing vessels and becoming acquainted with the values thereof?

A. I have in years gone by, not so much as to their valuation.

Q. Did you know the vessel "Antonio Suarez," a fishing smack?

A. Yes.

Q. Did you purchase her by the sale of the United States marshal and about when?

A. The summer of 1898, near the close of the war.

Q. Did you make an examination of the "Antonio Suarez" at or near the time of your purchase?

A. I did.

Q. What did you pay for her?
A. I paid $1,260.
Q. Upon what did you base your estimate of your value upon her?
A. I simply bought her for a party to go in her.
Q. You bought it for the use of Cap. Frank Panier, for what purpose?
A. For fishing purposes.
Q. Was it used for such?
A. Yes; she made one trip.
Q. Did you sell this vessel?
A. I did.
Q. Did you make any repairs on her after you purchased her?
A. I made some repairs on her bulwarks and——
86 Q. For what did you sell her?
A. I sold her for $2,300.
Q. Was that the best price you could get for her?
A. I guess it was. I charged $4,000, but that was all I could get for her.
Q. Did you make any efforts to sell her at higher prices?
A. There was no market for her that I knew of?
Q. Upon what did you base your value, $1,260?
A. Upon information that it was equal to that, and upon information furnished by Cap. Frank Panier for me.
Q. Was there any competition at this sale at which you purchased?
A. There was quite a number of bidders.
Q. Were you the highest bidder for this boat?
A. I think I was. It was knocked down to me.

Cross-examination:

Q. For what purposes did you purchase the "Antonio Suarez?"
A. For fishing purposes.
Q. Did you intend to fish in American or Cuban waters?
A. I intended to fish in American waters but to sell in Havana, was my intention when I bought the smack.
Q. Was the "Antonio Suarez," at the time you purchased her, fully equipped for fishing purposes?
A. With the exception of a few lines, otherwise she was fully equipped.
Q. Was there at this time any fishing business in the port of Key West or any other business?
A. Nothing more than our home industry for supplying the home market.
87 Q. Was there any demand at that time for vessels of this character of fishing smacks?
A. No; not that I am aware of.
Q. The fishing smack business between Key West and Cuba had been stopped for many years, had it not?
A. Yes, sir; quite a number of years.
Q. What was the value of the Spanish fishing smack "Antonio Suarez?" State what you think was the value.
A. I was given to understaud that she cost $8,000.00 before the war. I would say that, that she appeared to me almost new; her timbers and planks were in first-class condition.
Q. Why did you sell this vessel?

A. For the simple reason that I did not propose to have her eating her head off; that is the reason why I sold the vessel. She had made one trip. I sold her because it was a dead loss to keep her; in other words, she was an idle expense.

Redirect examination:

Q. Of your own knowledge, you did not know what this vessel cost?

A. Nothing more than what I heard from word of mouth that she was worth. I will say that she could not have been built here for that money. She was a better vessel than the one Mr. Lowe said he paid $10,000 for; that is, she was stronger—I mean that she was a better boat.

Q. But you have not knowledge enough of the values of vessels to rely on your own judgment, have you?

A. No, sir.

Q. You bought this vessel from the information of Mr. Frank Panier?

A. That went according to the prices; I did not propose and bid $10,000.00.

88 Q. I mean that you relied on your own judgment, did you not?

A. I knew enough to know that the price of the vessel was really worth the money.

WILLAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, residence, and occupation.

A. William B. Curry; 47 years of age; residence, Key West, Fla.; occupation, an auctioneer.

Q. Are you familiar with the value of sailing vessels?

A. I am not any authority on that.

Q. Have you had an opportunity for observing them much with a view of ascertaing their values?

A. In several instances.

Q. How long have you lived in Key West?

A. Thirty years.

Q. Have you had much to do with vessels?

A. I have owned a portion of five.

Q. Have you bought and sold any?

A. Yes, sir.

Q. For about how many years have you bought and sold them?

A. For a period of twenty years.

Q. Were you a member of the firm of Cash & Curry?

A. Yes, sir.

Q. Did you recollect the sales of the fishing smacks captured as prizes during the Spanish-American war?

A. Yes, sir.

89 Q. Do you recollect about when that was?

A. In 1898.

Q. Do you know the vessels bought by that firm?

A. Yes; the "Poder de Dios" and the "Antonio y Paco."

Q. What were the prices paid for them?

A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.

Q. Did you make an examination of these vessels at or near the time of purchases?

A. Yes, sir.
Q. What was their condition?
A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.
Q. Were any repairs to these two vessels made by your firm?
A. There were no repairs made that I remember of.
Q. Were they not put in good condition before they were sold?
A. They were put on the ways, cleaned and painted.
Q. Can you state about the cost of all these repairs?
A. No; unless I refer to the books of the store.
Q. Have you any idea?
A. No, sir.
Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?
A. The "Poder de Dios," I suppose, was worth $2,800.00, and the "Antonio y Paco" was worth, according to the business conditions existing—she was worth not more than we paid for her. At that time we paid $1,910.00.
Q. What would you say was her full value?
A. She was worth about $4,000.00.
90 Q. Under the business conditions existing, what was her value?
A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels, or are these vessels sold?
A. They are sold.
Q. When *they* did they sell them?
A. A few months after the purchase of them.
Q. Why did they sell them?
A. On account of lack of employment for them.
Q. Why did you purchase these two vessels?
A. We purchased them, that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay duty on fish more than vessels of other nationalities.
Q. How much did you get for the "Antonio y Paco?"
A. $2,900.00.
Q. How much for the "Poder de Dios?"
A. $1,500.00.
Q. Did you ever buy and sell fishing smacks?
A. No, sir.

Redirect examination:

Q. Were the vessels in, small sailing vessels?
A. I traded in a small one, about fifteen tons, as far as I can remember; the other was sixty-four tons; and the other one owned was about one hundred seventeen tons.

91 . I, the above-named Beverly B. Whalton, do hereby certify that I present to the next notice issued and served in the above-mentioned cause, I was attended at my office of aforesaid by I. A. Zacha-

rias, of counsel for the United States, and also by J. M. Phipps, of counsel for the several claimants herein, on the date herein stated; that the aforesaid-named witnesses who were of sound mind and lawful age, were by me first carefully examined and cautioned and duly sworn to testify to the truth, the whole truth, and nothing but the truth, and they thereupon testified, as is before shown (the said deposition hereinabove set forth were by stipulation of counsel taken by a stenographer, and by said stenographer transcribed from the statements of the said witnesses and the signatures of said witnesses to the said testimony were waived by the respective counsel to this cause, as hereinbefore set forth); that the said testimony was taken at the place in the next notice specified and at the time set forth; and that all that was so written and signed in the presence of said counsel for said United States and said claimants.

And I further certify the reason for taking said depositions was and is, and the fact was and is, that all the defendants live in the city of Key West, more than one hundred miles from the place where the said suit is to be tried; that I am neither of counsel nor attorney to either of the parties to said suit nor interested in the event of said cause; that it being impracticable for me to deliver said deposition and exhibits thereto attached with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up with my own hand and speedily and safely transmitted to the court for which it was taken and to remain under my seal until they have been opened.

As witness my hand and seal this 10th day of October, A. D. 1901.

[COURT SEAL.] BEVERLY B. WHALTON,
County Judge, Monroe County, Florida.

92 In United States district court, southern district of Florida.

UNITED STATES,
vs.
SCHR. "PAQUETE" AND 11 OTHER FISHING SMACKS.

In the matter of claims for restoration of value of vessels.

To Messrs. CONVERS & KIRLIN and J. M. PHIPPS, Esq., *Proctors and Counsel for Claimants:*

Please take notice that the United States will take the testimony of William H. Williams, Alfred Atchison, B. W. Johnson, Samuel Cates, W. D. Cash, W. B. Curry, John Lowe, jr., Milton Curry, Zacarias P. Gusman, and William Reading, and others, each and all of whom reside more than one hundred miles from the place of trial herein, for the final hearing, for use on behalf of the United States, before Beverly B. Whalton, esq., county judge of Monroe County, Florida, who is not of counsel nor interested in this cause, at the office of said Beverly B. Whalton, esq., in the city of Key West, Florida, on the seventh day of October, 1901, at ten o'clock a. m., and thereafter from day to day, as the taking of the deposition may be adjourned; and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and the Equity Rules.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) Filed Nov. 2, 1901, E. O. Locke, clerk.

93 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
SCHR. "PAQUETE HABANA" AND CARGO, AND 11 OTHERS. } Prize.

To the honorable JAMES W. LOCKE, Judge of said court:

Having been appointed by order of the court, at request of parties, to ascertain and report the amount of compensatory damages to be recovered by claimants herein, in accordance with the decree of this court of April 5, 1900, and with the opinion and decree of the United States Supreme Court in the case of the United States vs. the "Lela" of January 29, 1900, I would respectfully report that July 28, 1900, after filing of interrogatories by counsel for claimants, and of objections and cross-interrogatories by the United States attorney on behalf of the United States, and McCammen & Hayden, on behalf of the captors, commission was issued by me as clerk of said court to take testimony of witness for claimants in Havana. On September 3rd, 1900, said commission were returned executed, and placed in public files in the clerk's office, and parties in interest informed thereof.

On October 9, 1900, I notified counsel of parties in interest that I was ready to proceed with the matter, but counsel for complainants asked for further time.

On May 31st, 1901, counsel for claimant asked to be heard to sum up these cases in last week in June, if convenient to the United States attorney and counsel for captors. Counsel for the United States and captors being consulted by letter dated June 13, on June 17th counsel for captors replied that they could not be present in June, but would advise with the U. S. attorney. On June 26, 1901, counsel
94 for claimants wired asking that time for hearing argument be set for July 17th, 1901.

On June 30th, counsel were notified that I would hear argument at any time between July 8th and 13th; but counsel for claimants replied under date of July 9th that he was unable to be present at that date. On July 22nd I notified counsel interested that I would hear argument on August 6th, 1901. On August 6th there appeared before me J. Parker Kerlin, esq., counsel for claimant, and J. N. Stripling, esqr., U. S. attorney.

The U. S. attorney objected to final argument being heard, as the United States has not yet submitted evidence. It was agreed, however, that argument be heard on the claims as they stood, and the United States should have a reasonable time to take testimony in Key West, and submit the same in time to close this matter up before a session of this court was held.

The testimony of John F. Horr was then taken by the United States before me, and the hearing adjourned.

On August 30th, 1901, counsel were notified by me in writing that on October 1st I should prepare my report on such testimony as might then be before me.

By letter of September 4th, counsel for claimants asked that I do not report until he examine testimony taken by the United States.

On September 30th, the U. S. attorney procured from me as clerk U. S. court, a subpœna for witnesses to appear before the county judge at Key West, Fla.

On October 13th testimony taken by the United States at Key West pursuant to notice and by consent of counsel, who were present and represented the respective parties, and the testimony so taken was duly submitted and considered.

From all the testimony taken and submitted, and from the filed in court I have prepared and now submit my findings as follows:

I find due the claimants of the—

95

"Antonio Suarez"	$10,945.00
"Engracia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	8,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Setiembre"	7,285.75
"Santiago Apostol"	11,632.74
"Lela"	6,643.91
"Severita"	9,566.49
	$103,526.98

One hundred and three thousand five hundred and twenty-six 98 100 dollars.

I file herewith separate findings in each case, showing what is allowed on account of the vessels, what on account of cargo, and how arrived at, and what for interest. I have also included the amounts paid by claimants to the U. S. court for issuing commissions, and to the commissioner appointed by this court for taking testimony in Havana.

The quantity of fish, cargo of said vessels, I ascertained from the testimony in preparatorie en file, and I allowed $5.00 per quintal as its value, the only testimony thereon being that in April and May, 1898; same was worth in Havana $10 per kintal, Spanish silver. The Spanish silver which has been realized upon by this court in prize matters has proved to be worth 50 cents on the dollar, U. S. currency. Nothing was claimed or allowed for salt fish.

In determining the value of the vessels I have discarded the testimony given by John F. Horr, as it did not appear from his testimony that he had knowledge, or claimed to have knowledge, of the value of such vessels, or that he examined them with reference to ascertaining their value as "smacks," or had knowledge of their values in Havana, and he testified generally as to his "impressions" as to their condition and value in 1898.

Neither have I considered the prices which they brought at
96 auction in Key West as a measure of their real value. The testimony taken in Key West by the United States shows that there was no demand for them, no use for them there; that purchasers bought them on "speculation," and finding there was no use for them sold them, at a profit, but for what they could get.

John Lowe bought the "Engracia" and sold her at a profit of $1,000.00, and the "Quatro de Setiembre" at a profit of $1,050.00, yet says there was no use for smacks; that two built in Key West cost each $10,000.00.

Wm. Reedy sold the "Antonio Suarez" at a profit of over $1,000, "because it was a dead loss to keep her;" she "was an idle expense;" still, he says, she was a better vessel than those built by John Lowe, which cost to build in Key West $10,000 each.

A. Achieson bought the "Santiago Apostol" for $2,700 and sold her for $4,000, and thinks he did not get her real value, but, as he had no use for her, sold her.

The testimony taken in Key West shows that all these vessels were in good condition, though they had been laying there idle some time, with the exception of a few trifling repairs. Neither were the witnesses whose testimony was taken in Key West experts as to the values of smacks, with the exception of John Lowe and W. D. Cash, and they both testify that the value of such vessels in Key West at that time was only speculative.

The decree directs me to ascertain the amount that will compensate the owners in Havana for the capture of their vessels and cargoes in April and May, 1898, and I fail to find any testimony on that—which is the only issue—excepting the testimony which was taken in Havana.

In the "Lively" and cargo, I Gallison, 29, the principle as to damages for wrongful capture is said to be "equal to the real injury sustained."

In the "Amiable Nancy," 3 Wheaton, R. 546, measure of damages for loss of vessel by trespass is the "full value of the property." I consider this is what the Supreme Court intended by their judgment
97 to be ascertained.

In the "Ironmaster," Swabey, 443 (Pritchard's Ad. vol. 2, 1745) best evidence of value of a vessel is said to be the "opinion of competent persons who knew her shortly previous to her loss;" and further the "owner's affidavit of prime cost, unsupported by documentary proof is not sufficient."

From this, one can conclude that if such affidavit be supported by documentary proof it will be sufficient.

The testimony taken in Havana consists of the sworn statement of the owners or agents of the vessels as to their cost, the expenditures for repairs (rebuilding in some instances), in some cases legal documents, mortgages, &c., showing sums paid; extracts from books kept by the owners; and in every case, the testimony of an official whose duty it was to appraise and register each vessel in port, and a certified copy of his official appraisal and registry, made in March 1898, taken from the records. Such evidence, positive in character, and of a nature recognized by the law as being the best possible, can not be controverted by the impressions, and estimates, and guesses of witnesses who can not qualify as experts on values of such vessels, and only pretend to speak as to values in another port, in another country, and where there was no use for such property.

I therefore accept the testimony taken in Havana as establishing the value of the vessels and of the fish to the claimants at the dates of capture.

I allow 8% interest on such values from the dates of capture up to the

filing of this report, deducting the portion of proceeds returned to claimants. When the amount so returned exceeded the interest then due I made the computation according to the U. S. rule for partial payments.

I do not consider that the amounts as found fully "compensate" the claimants. I know officially that they have been to expense for proctors' fees, copies, printing of records, defending the libels for prize, and prosecuting their claims, but whether or not such items come within the scope of my appointment, no testimony has been submitted to
98 me in relation to them, and I therefore only refer to them to emphasize the fact that they are not included in this report.

I file herewith the testimony taken, separate reports as to each case, and correspondence and notices (or copies of same) as to the proceedings in connection herewith.

Respectfully,

E. O. LOCKE,
U. S. Commissioner.

Nov. 2nd, 1901.

99 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SLOOP "PAQUETE HABANA" AND CARGO, JOSE PAZOS, claimant on behalf of owners and crew. } Prize No. 9.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court, of April 5th, 1902, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola", dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i.e.:

Value of vessel	$4,500.00	
Interest on do. at 8% from date of capture, April 25th, 1898, to Nov. 2nd, 1901	1,287.00	
		$5,787.00
Less proceeds already returned claimant		121.69
		$5,665.31
And expenses of issuing commission and executing commission in Havana		21.75
Total		$5,688.06

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me and the method of arriving at the result above.

I also append my bill for services under said order and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

United States district court, southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE HABANA." } Prize No. .

To E. O. Locke, U. S. commissioner, specially appointed to take testimony and report.

For services in taking testimony, sending notices, hearing argument, and computing amounts, and reporting compensatory damages $25.00

(Endorsed:) United States vs. sloop "Paquete Habana." Report of Commissioner E. O. Locke. Filed November 2nd, 1901. E. O. Locke, clerk.

100 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
SCAR. "PAQUETE HABANA" AND CARGO, AND eleven others. } Prize.

Now comes the United States, and objects and excepts to the report of the commissioner filed herein, upon the following grounds:

1st. That the amount allowed as compensatory damages for the following vessels, and each of them, is excessive and not sustained by the evidence:

"Antonio Suarez"	$10,945.00
"Engrasia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	3,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Soteimbre"	7,285.75
"Santiago Apostol"	11,632.74
"Lola"	6,643.91
"Severita"	9,566.49

101 2nd. That the value of each of said vessels, to wit: "Antonio Suarez," "Engracia," "Oriente," "Poder de Dios," "Espana," "Antonio y Paco," "Fernandito," "Paquete Habana," "Quatro de Setiembre," "Santiago Apostol," "Lola," and "Severita," as ascertained by the commissioner, is contrary to the evidence.

3rd. That the commissioner erred in disregarding the testimony of the witness, John F. Horr, for the United States.

4th. The commissioner erred in not hearing and sustaining the objections of the United States, the captors, to the interrogatories propounded

to the several witnesses examined under commission in Havana, Cuba, to wit:

Jose Pazos, Juàn Lluria y Pujadas, Francisco Gandon, Antonio Suarez, Seguendo Casteleiro, Cesar de la Torre, Severo Gonzalez, Domingo Trocha, Francisco Vilar, Francisco Gonzalez, Manuel Carillo, Jose Bengoehea, Santiago Deus.

5th. The commissioner by his report appears to have disregarded wholly the testimony taken before B. B. Walton, commissioner at Key West, Florida, of the several witnesses for the United States, to wit:

102 Samuel Cates, William D. Cash, Milton Curry, John Lowe, Alfred Atchison, William Reedy, William B. Curry.

6th. The commissioner erred in limiting his consideration of the value of said vessels to the testimony as to the cost and alleged market values in Havana, Cuba, only.

J. N. STRIPLING, *U. S. Attorney.*

(Endorsed:) In United States district court, So. Dist. of Fla. The United States vs. Schr. "Paquete Habana" and cargo, and eleven others. Exceptions to commissioner's report. Filed this 5th day of Nov., 1901. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. J. N. Stripling, U. S. attorney.

103 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE HABANA" AND CARGO, Jose Pazes, claimant. } Prize # 9.

This cause coming on to be heard upon the mandate of the Supreme Court, and the report of the special commissioner herein appointed by consent of parties, the testimony accompanying the same, and the exceptions thereto, and having been fully heard by argument and duly considered, it is hereby ordered that the exceptions to said commissioner's report be overruled; and it is found that the compensatory damages due claimant under said mandate of the Supreme Court, with interest to date of such commissioner's report, is $5,687.06.

And it is further ordered, adjudged, and decreed that the claimant, Jose Pazes, claimant on behalf of owners and crew, have, receive, and recover from The United States, the libelant, the said amount of $5,687.06, together with interest from the 2nd day of November, 1901, the date of said commissioner's report, and twenty-five dollars cost to said commissioner, which is hereby taxed and allowed.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 8th, 1902.

(Endorsed:) U. S. district court, southern district of Florida. The United States vs. Schr. "Paquete Habana," &c., claimant. Decree for claimant. Filed Feb. 8th, 1902. E. O. Locke, clerk.

104 In the United States district court, southern district of Florida.

UNITED STATES
vs.
SCHOONER "PAQUETE HABANA" AND CARGO, and eleven others.

These several causes coming on to be heard, on application of the United States for time within which to consider the advisability of an appeal,

It is ordered, that sixty days from this date be allowed to the United States and to the captors within which to take an appeal from the decree of February 8th, 1902, determining the amount awarding compensatory damages to the claimants herein.

Done and ordered at Jacksonville, Florida, this third day of March, A. D. 1902.

JAMES W. LOCKE, *Judge.*

(Endorsed:) In United States district court, Southern Dist. of Fla. United States vs. Schooner "Paquete Habana" and cargo, and eleven others. Order allowing time in which to perfect an appeal. Filed Mar. 3, 1902. E. O. Locke, clerk.

105 United States district court, southern district of Florida.

THE UNITED STATES
against
THE SPANISH SMACK "PAQUETE HABANA," In prize.
Juan Pasos, claimant.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

J. Parker Kirlin, being duly sworn, deposes and says: I am a member of the firm of Convers & Kirlin, proctors for the claimant herein, and as such have had knowledge and control of the conduct of this case. My firm was employed as proctors by the master of the said "Paquete Habana," acting for the then owners thereof, at Key West, Florida, in May, 1898, when the said vessel was in that port and libeled in this court as prize of war at the instance of the United States. As such proctors my firm moved this court to open the decree of condemnation and sale, which had been entered herein on or about May 23, 1898, and to file a claim in said action, on behalf of the said owners, in the name of the master of the said vessel, which motion was duly granted on or about May 28, 1898. Pursuant thereto my firm duly filed a claim to the said vessel, on behalf of the said owners, in the name of the master, Juan Pasos, as master and lawful bailee thereof. On or about May 30, 1898, a final decree of condemnation and sale in the above-entitled action was entered, and the vessel was sold as prize of war.

106 The said case of the United States against the "Paquete Habana" came on to be heard in the Supreme Court of the United States, and the said court issued its mandate to the United States

district court for the southern district of Florida, ordering that the decree of the said court be reversed and that the proceeds of the sale of the vessel, together with the proceeds of any sale of its cargo, be restored to the claimant, with damages and costs.

Pursuant to such mandate an interlocutory decree was entered herein, upon the consent of the counsel for the United States and of the counsel for the captors of the said vessel, by the terms of which it was ordered that the final decree entered herein, on or about May 30, 1898, be vacated and set aside, and that the libel be dismissed, and that the proceeds of the sale of the said vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and costs, and the question whether the amount of such damages, when determined, should be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, was reserved for further consideration on the coming in of the report of the commissioner appointed to determine the amount of such damages, and it was referred to Eugene O. Locke, esq., as special commissioner, to determine the amount thereof.

107 Further proceedings in accordance with such interlocutory decree were had, and on or about February 8, 1902, a final decree was entered in favor of the claimant herein.

This application is made to vacate and set aside the said decree and to amend the proceedings herein, in certain particulars, on the following grounds:

1. The said master, who appears as the claimant of record herein, acted in employing my firm for and on behalf of the persons who were the owners of the said vessel at the time of the seizure thereof and the filing of the libel herein, and is described as so acting in the claim and test affidavit filed herein, and the said persons are the real parties in interest herein.

The owners of the said vessel at the time of the seizure of the vessel and the filing of the libel herein were Justo Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, as appears from the claim and test affidavit filed herein, and from the testimony taken under the interlocutory decree hereinbefore referred to. The reason why the said parties were not made the actual claimants of record in the said case was because they were not within the United States at the time the said claim was filed, but were then in the island of Cuba, as I am informed and believe. The said parties who were then the owners of the said vessel are the real parties in interest and they now desire to be substituted in place of the said master as claimants of record.

Powers of attorney from the said parties who were the owners of the said vessel at the time of her seizure and the filing of the libel herein, and who are the true parties in interest herein to conduct the said case and to receive payment of any and all sums found and decreed to be due herein from the United States, are filed in this court, and appli-

108 cation is now made to have the said decree entered herein on or about February 8, 1902, vacated and set aside, so that the names of the said parties, instead of the name of the said master, may be substituted as the claimants in any decree to be entered herein, and that the name of the said parties may be substituted for the name of the said

master, as claimants of the said vessel, in all the papers and proceedings had herein.

2. The said commissioner, Eugene O. Locke, duly reported his findings, and on exception to his report argument was had and the said report was confirmed. No further proceedings have been had subsequent to the aforesaid report upon the question of the responsibility for or apportionment of the said damages as provided in the said interlocutory decree hereinbefore referred to, and application is further made to reopen the said decree entered herein on or about February 8, 1902, for the purpose of taking such further proceedings as have been provided for by agreement in the said interlocutory decree, and as may be right and proper, before the entry of a final decree herein.

J. PARKER KIRLIN.

Sworn to before me this 9th day of May, 1902.

[NOTARIAL SEAL.] JAMES T. KILBRETH,
Notary Public, New York County.

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish Smack "Paquete Habana," Juan Pasos, claimant. Affidavit of J. Parker Kirlin. Filed this 12th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

109 At a stated term of the United States district court for the southern district of Florida, held in the court rooms, in the Federal building in the city of Jacksonville on the 19 day of May, 1902. Present: Honorable James W. Locke, district judge.

THE UNITED STATES
against
THE SPANISH SMACK "PAQUETE HABANA,"
Juan Pasos, claimant.
} In prize.

On reading and filing the affidavit of J. Parker Kirlin, verified May 9, 1902, and on all the papers and proceedings had herein,

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the United States attorney, it is hereby

Ordered, I. That the final decree heretofore made herein on or about February 8, 1902, be vacated and set aside.

II. That the report of the special commissioner appointed to assess and determine the amount of the claimant's damages herein be, and the same hereby is, confirmed, with twenty-five dollars costs, hereby taxed and allowed, to be paid to the said commissioner.

III. That the names of Justa Galban, Manuel Pasos, Jose Pasos, and Juan Pasos be substituted for the name of Juan Pasos, as claimants of the said vessel, in all the papers and proceedings had herein.

110 IV. That leave is reserved to the claimants to enter a new decree for the amount of their damages and costs as aforesaid, after a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors,

or apportioned between the United States and the naval captors, the determination of this question being reserved for further proceedings.

JAMES W. LOCKE, *Judge.*

Aug. 19, 1902.

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish smack "Paquete Habana," Juan Pasos, claimant. Order vacating final decree. Filed this 19th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

111 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville on the 16th day of June, 1902. Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE SPANISH SMACK "PAQUETE HABANA," JUSTA Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimants.

An interlocutory decree having been entered on or about April 5, 1900, directing among other things that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein, at the sum of $\$5{,}687\frac{06}{100}$, as will more fully appear from his report on file;

112 And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States

and the naval captors as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimants, Justa Galban, Manuel Pasos, Jose Pasos, and Juan Pasos, have, receive, and recover from the United States, the libelant herein, the sum of $\$5,687\frac{06}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Paquete Habana" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $\$280\frac{46}{100}$, making in all the sum of $\$5,992\frac{52}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

113 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, a further hearing will be had herein before the Honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.

J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.

To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed.) United States district court, southern district of Florida. The United States against the Spanish smack "Paquete Habana." Notice of further hearing. Final decree and notice of settlement. Filed June 16, 1902. E. O. Locke, clerk. Service of a copy of the within notice of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. H. M. Hoyt, asst. atty. genl. U. S.

114 United States district court, southern district of Florida.

THE UNITED STATES, APPELLANT,
vs.
THE FISHING SMACK "PAQUETE HABANA." Justa Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimant, appelle. } Prize.

The United States assign error to the final decision and decree of the United States district court, in the southern district of Florida, herein as follows:

First. The court erred in sustaining the report of the commissioner as to the amount of damages sustained by the claimant.

Second. The court erred in overruling the exceptions filed by the complaint to the report of the commissioner.

Third. The damages awarded to the claimant are excessive and exorbitant.

Fourth. The court erred in overruling the motion of the complainant to have the damages awarded against the captors.

Fifth. The court erred in awarding damages herein against the United States.

J. N. STRIPLING,
United States Attorney.

(Endorsed.) United States district court, southern district of Florida. United States, appellant, vs. Fishing Smack "Paquete Habana," Justa Galban et al., claimant, appellee. Filed June 24th, 1902. E. O. Locke, clerk.

115 United States district court, southern district of Florida.

THE UNITED STATES, APPELLANT,
vs.
THE FISHING SMACK "PAQUETTE HABANA," JUSTA Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimant, appellee. } Prize.

Now comes the United States, appellant, considering itself aggrieved by the final decision and decree herein, and alleging error in the said decree, appeals therefrom to the Supreme Court of the United States. It presents herewith an assignment of errors complained of and thereupon prays that the said appeal may be allowed, and that the record and all proceedings herein may be duly certified to the Supreme Court of the United States, in accordance with the rules and practices in such cases made and provided, and to the end that the said appeal may be heard and determined by the said court.

J. N. STRIPLING,
United States Attorney.

June 24th, 1902.

Upon reading and filing the foregoing notice and prayer of appeal, and the assignment of errors on appeal, it is—

Ordered that the appeal of the United States be, and the same is, hereby allowed.

JAMES W. LOCKE,
United States Judge.

June 24th, 1902.
(In open court.)

116 District court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE "PAQUETE" AND CARGO. } Prize.

I, Eugene O. Locke, clerk of the district court of the United States in and for the southern district of Florida, hereby certify that the foregoing pages, numbered from one to one hundred and fifteen, inclusive, is a true copy of the record, assignments of errors, and proceedings in said court in the above-entitled cause.

In testimony whereof I hereunto set my hand, and affix the seal of said court, at Jacksonville, in said district, this eighteenth day of September, A. D. 1902.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

117 (Indorsment on cover:) Office Supreme Court of U. S. Received October 4, 1902. File No. 18806. S. Florida, D. C. U. S. Term No. 578. The United States, appellant, vs. The Spanish Smack "Paquete Habana," Justa Galban et al., claimants. Filed January 31, 1903.

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